109-271

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 96.

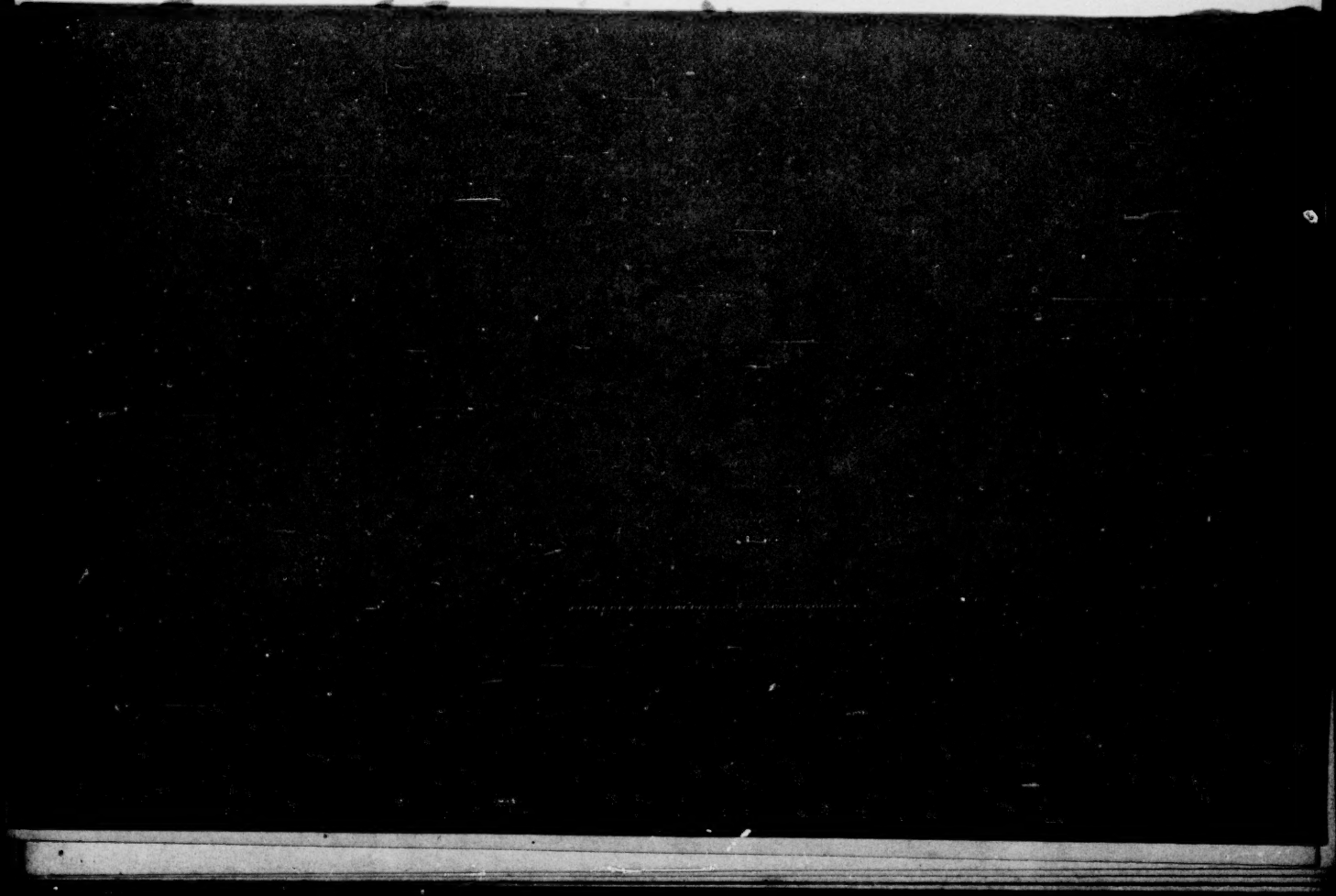
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, APPELLANTS,

vs.

GEORGE N. STEBBENS, EXECUTOR OF CYRUS CURTIS, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 11, 1880.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 96.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, APPELLANTS,

VS.

GEORGE N. STEBBENS, EXECUTOR OF CYRUS CURTIS, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

INDEX.

	Original.	Print.
Petition of appeal	1	1
Citation	19	7
Bond on appeal	21	7
Bill of complaint	24	9
Answer of Bernards Township	43	21
Demurrer of Catharine A. Beekman *et al*	62	32
Answer of Stelle and Guerin	65	35
Order overruling demurrer	76	39
Answer of Beekman's executors	78	40
Replication	90	47
Do	92	48
Do	94	48
Consent to take testimony	96	49
TESTIMONY.		
William Z. Larned	99	50
William Ferguson	103	51
Matthew Mitchell	107	53
John L. Welling	120	61
Henry Ball	130	67
Edwin Ford	142	75
James Holmes	151	80

	Original.	Print.
Horace B. Stone	157	84
Silas C. Young	166	90
Matthew H. Vanderveer	170	92
Daniel D. Craig	173	94
William A. McMurtry	178	97
George W. Forsyth	199	109
Lewis C. Burroughs	201	111
Charles H. Mulford	203	112
Moses A. Brookfield	205	113
Hampton O. Marsh	209	115
George A. Lawrence (recalled)	213	118
William A. McMurtry (recalled)	217	120
Daniel D. Craig (recalled)	221	122
John O. Rush	225	124
Charles N. Conklin	228	126
John Compton	232	128
Oliver R. Stelle	243	135
John Guerin	284	160
Samuel R. DeCoster	303	171
Oliver Dunster	306	173
Ferdinand Van Dorn	308	174
Aaron Dilley	313	177
Daniel D. Craig	317	179
Jerome E. Heldebrant	319	181
Henry Baird	322	183
Charles Barker	326	185
William Denum	328	186
Garret V. Freeman	329	186
John C. West	331	188
Ralph Davenport	334	190
Abraham T. Huff	337	191
Daniel D. Craig (recalled)	341	193

COMPLAINANTS' EXHIBITS.

Exhibit C 47	(petition for and appointment of commissioners)	345	195
48	(oaths of commisioners)	348	197
49	(oaths of commissioners)	349	197
50	(oaths of commissioners)	350	197
53	(proxy)	352	199
58	(certificate of stock)	353	199
59	(certificate of stock)	354	200

DEFENDANT'S EXHIBITS.

Exhibit B 1	(agreement between holders of bonds)	355	200
2	(notice of tax-payers)	357	201
3	(letter of Stelle to Packer, May 8, 1872)	358	202
4	(report of commissioners as to subscription, &c.)	360	203
5	(receipt for bonds)	361	203
6	(receipt for bonds)	361	204
7	(statement as to bonds)	362	204
8	(proceedings of fifth annual meeting of stockholders of the New Jersey West Line Railroad)	363	204
10	(deed of Randolph, master, &c., to Ralston, September 12, 1878)	364	205

	Original.	Print.
Exhibit B 11 (mortgage of the New Jersey West Line Railroad Company to Randolph and Clarke, trustees, March 11, 1870)	376	212
Certified copy of the book of registry of bonds	398	225
Consents of tax-payers as to bonds	410	235
Defendant's Exhibit 2 (proxy)	430	247
Defendant's Exhibit 1 (agreement as to transfer of stock)	432	248
Order as to decree	437	249
Death of plaintiff suggested and order substituting executor	438	249
Final decree	439	250
Clerk's certificate	443	251

a United States Supreme Court.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset and State of New Jersey, appellants,
vs.
GEORGE N. STEBBINS, EXECUTOR OF CYRUS Curtis, deceased.
} On appeal.

On appeal from United States circuit court, third circuit, district of New Jersey.

1 *Petition of appeal.*

United States Supreme Court.

BETWEEN THE INHABITANTS OF THE TOWNship of Bernards, in the county of Somerset, appellants,
and
GEORGE N. STEBBINS, EXECUTOR OF CYRUS Curtis, deceased, appellee.
} On bill, &c.

To the honorable the Supreme Court of the United States:

The appeal of the Inhabitants of the Township of Bernards, in the county of Somerset, defendants and appellants, respectfully showeth:

That upon the twenty-second day of March, eighteen hundred and seventy-six, the complainant, Cyrus Curtis, filed his bill of complaint in the circuit court of the United States for the district of New Jersey against the above-named defendants and appellants, and in said bill of complaint, after setting up the parties complainant and defendants,
2 alleged that on the 29th day of March, 1865, the legislature of the State of New Jersey passed an act chartering the Passaic Valley and Peapack Railroad Company, authorizing said company to lay out and construct a railroad from some point in the county of Union or the county of Essex and passing through the township of Springfield, in the county of Union, into the township of New Providence, and up the Passaic Valley at or near Baskingridge, in the township of Bernards, in the county of Somerset, and so into the village of Peapack, in the township of Bedminister, in the said county of Somerset; that the incorporators therein named subsequently opened books and received subscriptions for the stock, and that the subscribers organized themselves into an incorporation by electing a board of directors; that the said corporation caused to be surveyed and located the route of said railroad, commencing at a point in the county of Union and running up the valley of the Passaic and through the township of Bernards; that on the 9th day of April, 1868, the legislature of said State passed an act entitled "An act to
3 authorize certain townships in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company;" that pursuant to the last-recited act twelve or more freeholders of the township of Bernards, in the county

of Somerset, made application to the circuit court of said county for the appointment of three freeholders, residents of the said township, to carry into effect the purposes and provisions of the said act, and that John H. Anderson, Oliver R. Stelle, and John Guerin were duly appointed; that said commissioners entered into a bond to the said township, with approved sureties, for the faithful discharge of their duties, which bond was deposited with the clerk of the township; that the commissioners in the month of December, 1868, filed in the clerk's office of the county of Somerset three paper writings annexed to each other, purporting to be signed by divers tax-payers of the township of Bernards, to which were attached affidavits verifying the same, and certifying that the persons
4 so signing were a majority of the tax-payers of the township and represented a majority of the landed property appearing upon the last assessment-roll of said township for the year 1867, and that the purport of said paper writings so signed and filed was that the persons signing the same thereby consented that the said commissioners might, under the provisions of the law, borrow on the faith and credit of the township and execute bonds for one hundred and thirty thousand dollars, which money was to be invested in the stock of the Passaic Valley and Peapack Railroad Company, and that the commissioners might exercise full and complete powers for the township to carry into effect the purposes and provisions of the said act; that a certified copy of said consent, under the hand and seal of the county clerk, was afterwards filed with the clerk of the township of Bernards; that on the first day of September, 1869, the said commissioners caused to be filed in the office of the clerk of the county of Somerset three other paper writings of the same tenor and effect as those last mentioned, except that the
5 amount of bonds to be issued was limited to one hundred and twenty-seven thousand dollars, the same being certified and authenticated as aforesaid, and a copy thereof duly filed with the clerk of said township; that afterwards and before January 1, 1870, the same commissioners, acting in pursuance of the authority of the said consent-papers, subscribed for 2,540 shares of the par value of fifty dollars each of the capital stock of the said railroad company, the same to be paid for in instalments as called for by the directors, the par value of which amounted to one hundred and twenty-seven thousand dollars, which sum did not exceed ten per cent. of value of the real estate of said township, as it appeared upon the assessment roll for 1867; and that about the 1st of January, 1869, they caused to be prepared divers bonds of the denominations of $1,000, $500, and $100 each, respectively, and amounting in the aggregate to the sum of one hundred and twenty-seven thousand dollars, with semi-annual interest coupons annexed thereto at seven per cent., and providing for the payment
6 of the principal at various dates ranging from six years to twenty-five years, and not longer, from date, and that the form of each of said bonds was as follows:

No. .] UNITED STATES OF AMERICA. [$

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, STATE OF NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of Somerset, acknowledging themselves to owe to bearer five hundred dollars,

which sum they promise to pay the holder hereof at the American Exchange National Bank, in the city of New York, twenty-three years after the date hereof, and interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of July and January in each year, until the principal sum shall be paid, on presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of the said township, in pursuance of an act entitled "An
7 act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868.

(On right margin:) Five hundred dollars.

(On left margin:) Five hundred dollars.

In testimony whereof the undersigned, commissioners of the said township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed, commissioned, and sworn, have hereunto set our hands and seals the first day of January, 1869.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

(Coupons annexed.)

$17.50.

The Inhabitants of the Township of Bernards, in the county of Somerset, will pay to bearer, at the American Exchange National Bank, in the city of New York, seventeen $\frac{50}{100}$ dollars on the first day of January, 1889, for six months' interest on bond No. .

JOHN H. ANDERSON,
8 OLIVER R. STELLE, AND
JOHN GUERIN,
Commissioners.

That each of said bonds was duly registered in the office of the clerk of the county of Somerset, and was signed by and in the proper handwriting of the said commissioners; that they were negotiated and disposed of by the said commissioners in open market, and for money paid by various persons therefore, and with the proceeds thereof the commissioners paid to the said railroad company one hundred and twenty-seven thousand dollars for the subscription of the township for 2,540 shares of the capital stock of said company; that afterwards, in the year 1870, a certificate of 2,540 shares of the said stock was duly issued to the Inhabitants of the Township of Bernards, and was delivered to the said commissioners, who have ever since held it and voted on the same at all meetings of the stockholders and enjoyed all the benefits of ownership; that the said railroad company, during the years 1869 and 1870, caused to be built and

9 put in operation a railroad leading from a point in the line of the Morris and Essex Railroad, near Summit, in the county of Union, and extending into the township of Bernards, in the county of Somerset, entering the same at a point about two and one-half miles in a southeasterly direction from the village of Baskingridge and passing through the last-mentioned village to the village of Bernardsville, in said county, a distance of about five miles in said county, the said road having a switch connection with the Morris and Essex Railroad at the point near Summit; and that for the past three years regular passenger and freight trains have been run over the Passaic Valley and Peapack Railroad daily from and to the said village of Bernardsville to Summit, and thence over the Morris and Essex Railroad, through Newark, to the city of New York, and that the Inhabitants of the Township of Bernards have derived great benefit therefrom, the taxable property having been increased thereby at least twenty per cent.

That the said railroad company, after completing the road from Bernardsville to the point near Summit, proceeded with the work of
10 grading and excavating for a continuation thereof to the city of Newark, and expending a large sum of money thereon, and nearly completed the grading for about six miles from Summit to the city of Newark, when the work stopped in consequence of the financial revolution of 1873; that about the 15th of February, 1870, the legislature of New Jersey changed the name of the Passaic Valley and Peapack Railroad Company to "The New Jersey West Line Railroad Company," without any change, nevertheless, of corporate rights, powers, and privileges, and that about 1872 one Asa Packer and others, who were largely interested in the Lehigh Valley Railroad Company, became desirous of procuring a charter to construct a railroad across New Jersey, from the Delaware River to New York, in order to form a continuation of the said Lehigh Valley Road across said State, and with that in view obtained control of the majority of the stock of said Passaic Valley and Peapack or New Jersey West Line Railroad Company, voted themselves into the offices, and assumed the control thereof; that the aforesaid commissioners assisted the said
11 Packer and his associates in their project and voted according to their wishes at all meetings of stockholders, on an agreement with him and his associates that he and they should take from the township its stock in the said railroad and pay off the bonds issued by them, or indemnify the township against their payment; that early in 1873 one Benjamin F. Beekman, a wealthy capitalist, became desirous of obtaining the control, for himself and others associated with him, of the capital stock and direction of the said railroad, and for that purpose applied to said Anderson, Stelle, & Guerin for their influence and votes in stockholders' meetings in that behalf, and thereupon an agreement and undertaking in writing under seal was entered into by said Beekman with the township of Bernards, by which Beekman agreed and undertook, for a good and valuable consideration, to indemnify and save harmless the said township against the payment of the principal and arrears of interest of and coupons due and to grow due on all of said bonds, and delivered the same to the commissioners, and that
12 said agreement furnishes complete indemnity to the township against the said bonds, and in effect assumes their payment.

That afterwards and during the year 1873 the commissioners sold to

Beekman 88 shares of the capital stock of said railroad of the par value of $4,400, and received in payment therefor an equal amount of the bonds so issued by them at their par value; that said Beekman made an effort to complete said railroad from Summit to Newark, and failed; and that in February, 1875, he departed this life, having first made and published his last will and testament, whereby he appointed Catharine A. Beekman, J. Reeve Vanderveer, and William Z. Larned executors thereof, by whom the said will was afterwards proved, as well in New York as in New Jersey, and letters probate were duly issued thereon by the surrogate of the county of Union to said executors; that the complainants, previous to the 5th day of May, 1874, became, by purchase in open market for their market price, which he then and there paid, and was and still is the lawful owner and holder of divers of the
13 said bonds so issued by the said commissioners of the tenor and effect herein before set forth, amounting to twenty-three thousand six hundred dollars; that each of said bonds was duly registered and issued by the said commissioners for value paid in open market as aforesaid, and that the complainant is the true and actual holder of the same. That the Township of Bernards, neglecting to pay the interest coupons due on said bonds since January 1, 1871, the complainants on the day of April, 1874, commenced an action at law in a plea of debt in the said circuit court of the United States against the township, to recover the arrears of interest. That a declaration was duly filed therein, to which the township demurred, and said demurrer being overruled the said township, by leave of the court, filed a plea setting up as a defence to said suit that the several bonds held by the complainant were not sealed by the said commissioners, and were not the deed of the township; and complainant admits that on inspecting the said bonds, although each of them in the attestation clause thereof
14 declare that it has been sealed by the said commissioners, and each of them is signed in the proper handwriting of the commissioners, it appears in point of fact that no seals are found thereon; that they had been taken and held by complainant without knowledge that any such defect existed; that the omission to seal said bonds was a mere mistake on the part of said commissioners; that the said bonds were issued by the commissioners in pursuance of the power and authority in them for that purpose reposed, and in good faith; that the Township of Bernards had received the full benefit and consideration therefor contemplated by law, and that the failure to affix seals thereto was an oversight and accidental omission contrary to the intention and understanding of the parties to said bonds; that it is inequitable and contrary to good conscience for the township to set up such a defence, and that the complainant as bona fide holder and bearer of the same for a valuable consideration paid is entitled in equity to
15 have said several lands held, treated, and considered to be as valid and effectual in law as if the same had been actually sealed by said commissioners before being issued, and is entitled to have the same reformed by actually affixing thereto at this time the seals of said commissioners.

The bill then prays that the said bonds so held by the complainant may be reformed as aforesaid, and that the Inhabitants of the Township of Bernards and the said Oliver R. Stelle and John Guerin, or one or some of them, may be decreed and directed by the court to affix to said bonds opposite the signatures of John H. Anderson, Oliver R. Stelle, and John Guerin

their seals or scrolls or other devices in the nature of and equivalent in law to seals, and that it may be declared and decreed by the said court that the said bonds shall at all times and in all places and for all purposes be held, deemed, and taken to be valid and effectual in law in all respects the same and to the same extent as if the same had been actually sealed by the said commissioners before the issuing the same, and that the said the
16 Inhabitants of the Township of Bernards may be perpetually enjoined and restrained by the decree of this court from setting up, alleging, or pretending as a defence in said suit at law so brought by the complainant in said court, or in any other suit at any other time hereafter to be brought by complainant in any court to recover the principal or interest or any part thereof due or to grow due on said bonds, that the said bonds or any of them were not actually sealed by said commissioners before being issued by them, or that said bonds are not the deed of said township.

That the said defendants the Inhabitants of the Township of Bernards, the said defendants Oliver R. Stelle and John Guerin, and the defendants Catharine Adalaide Beekman, J. Reeve Vanderveer, and William Z. Larned, executors of Benjamin F. Beekman, deceased, appeared and filed separate answers to the said bill of complaint, admitting certain allegations in said bill contained and denying others, and praying that they might be dismissed with their costs.

That replications were duly filed to said answers, and testimony for both sides taken, and the said cause was duly argued; that on the second
17 day of October, 1879, a final decree was entered in this cause, in which it was adjudged and decreed that the several and respective bonds or writings in the nature of bonds mentioned and described in the complainant's bill of complaint and each of them shall be as against the said defendants and each of them at all times and in all places and for all purposes held, deemed, and taken to be valid and effectual in the law in all respects the same and to the same extent as if the same and each of them had been before the issuing of the same actually and in fact sealed by the said John H. Anderson, Oliver R. Stelle, and John Guerin, commissioners as aforesaid of said Township of Bernards, and the said The Inhabitants of the Township of Bernards, in the county of Somerset, were thereby perpetually enjoined and forever restrained from setting up, alleging, or pretending in said action at law so brought as in said bill of complaint set forth in this court upon divers overdue interest coupons upon said bonds or in any action at any time hereafter to be brought in any court upon said bonds or either or any of them or upon any interest coupons at any
18 time due thereon, by any lawful holder or owner thereof, or of either of them, that the said bonds or any of them were not actually sealed by said commissioners before being issued by them. And this decree shall take effect as of the fourth day of April, eighteen hundred and seventy-nine.

Wherefore, and the said decree being erroneous, these appellants appeal from the whole of said decree of said circuit court, and respectfully pray that the said decree and the bill, answers, pleadings, depositions, evidences, exhibits, and all the proceedings in this cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the

said decree may be reversed with costs, or such other relief may be granted as to the said Supreme Court shall seem just.

ALVAH A. CLARKE,
Sol's & of Counsel with Appellants.

Allowed Dec. 1, 1879.

JNO. T. NIXON, *J.*

19 United States circuit court, district of New Jersey. In equity.

By the honorable John T. Nixon, one of the judges of the circuit court of the United States for the district of New Jersey, to George N. Stebbens, executor of Cyrus Curtis, deceased.

Whereas the Inhabitants of the Township of Bernards, in the county of Somerset, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the United States circuit court for this district in favor of you, the said George N. Stebbens, executor of Cyrus Curtis, deceased, and have filed the security required by law, you are therefore cited hereby to appear before the said Supreme Court, at the city of Washington, in the District of Columbia, on the second
20 Monday of October, A. D. 1880, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Trenton, in the district of New Jersey, in the third circuit, the sixth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

JNO. T. NIXON,
District Judge.

20½ I acknowledge service of a copy of the within citation the twelfth day of December, eighteen hundred & seventy-nine.

HENRY C. PITNEY,
Sol. of Geo. N. Stebbins, Executor of Cyrus Curtis, deceased.

(Indorsed:) United States circuit court, district of New Jersey. In equity. The Inhabitants of the Township of Bernards, appellants, vs. George N. Stebbens, ex'r of Cyrus Curtis, deceased, appellee. Citation. Filed Dec. 6, 1879. S. D. Oliphant, clerk. Returned, service ack'ledg. Dec. 15, 1879. S. D. Oliphant, clerk.

21 Supreme court of the United States.

GEORGE N. HEBBINS, EXECUTOR OF CYRUS Curtis, deceased,
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERnards, in the County of Somerset; Oliver R. Stelle, John Guerin, comm'rs, &c.; Catherine A. Beekman, J. Reeve Vanderveer, and William T. Larned, executors, &c.

Know all men by these presents that we, John Compton, William Van Dorn, and William Childs, all of the township of Bernards, in the county

of Somerset and State of New Jersey, are held and firmly bound unto George N. Hebbins, executor of Cyrus Curtiss, deceased, in the sum of five hundred dollars, to be paid to the said George N. Hebbins, executor as aforesaid, or to his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-sixth day of November, A. D. eighteen hundred and seventy-nine.

22 Whereas the above-named The Inhabitants of the Township of Bernards, in the county of Somerset, have taken our appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the district of New Jersey:

Now, therefore, the condition of this obligation is such that of the above-named The Inhabitants of the Township of Bernards, in the county of Somerset, shall prosecute the said appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN COMPTON. [SEAL.]
WILLIAM VAN DORN. [SEAL.]
WILLIAM CHILDS. [SEAL.]

Signed, sealed, and delivered in the presence of—

23 STATE OF NEW JERSEY,
Somerset County:

John Compton, William Van Dorn, & William Childs, being severally duly sworn, on their respective oaths say: And first the said John Compton for himself says that he is a freeholder and resident in the township of Bernards, in the county of Somerset and State of New Jersey, and is worth the sum of five hundred dollars after all his debts are paid; and this deponent, the said William Van Dorn, for himself says that he is a resident in the township of Bernards, in the county and State aforesaid, and is worth five hundred dollars after all his debts are paid; and this deponent, the said William Childs, for himself says that he is a freeholder and resident in the township of Bernards, in the county & State aforesaid, and is worth five hundred dollars after all his debts are paid.

JOHN COMPTON.
WILLIAM VAN DORN.
WILLIAM CHILDS.

Sworn and subscribed before me, November 26th, A. D. 1879, at Somerset County.

Approved Dec. 6, 1879.

JNO. T. NIXON, *J.*

24 United States circuit court for the district of New Jersey. In equity.

BETWEEN CYRUS CURTIS, complainant, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset; Oliver R. Stelle, John Guerin, commissioners; Catharine Adelaide Beekman, I. Reeve Vandervere, and William L. Larned, executors of the last will and testament of Benjamin F. Beekman, deceased, defendants.	Bill for relief.

Bill of complaint.

To the honorable judges of the circuit court of the United States for the district of New Jersey:

Humbly complaining, showeth unto your honors, your orator, Cyrus Curtiss, a citizen and resident of the State of New York:

1. That on or about the twenty-ninth day of March, eighteen hundred and sixty-five, the legislature of the State of New Jersey duly passed, and the governor of said State duly approved, an act entitled "An act to charter the Passaic Valley and Peapack Railroad Company," in and by which act certain persons therein named were duly authorized to organize a corporation to be named "The Passaic Valley and Peapack Railroad Company," which, when so organized, should have all the attributes of a cor-
25 poration in said State, including perpetual succession and a capital stock of twelve hundred thousand dollars, with the right to increase the same to two millions of dollars, and to be divided into shares of fifty dollars each, as in and by the original of said act of the legislature on file in the office of the secretary of state of said State of New Jersey, or a duly certified copy thereof, will more fully appear, and to which your orator begs leave to refer for greater certainty.

2. That in and by the sixth section of said act the said corporation was authorized and invested with all the rights and powers necessary and expedient to survey, lay out, locate and construct, maintain, and operate a railroad from some point in the county of Union or the county of Essex, in said State of New Jersey, passing through the township of Springfield, in said county of Union, into the township of New Providence, in said county, and up the Passaic Valley at or near Baskingridge, in the township of Bernards, in the county of Somerset, in said State of New Jersey, and so on to the village of Peapack, in the township of Bedminster, in said last-mentioned county.

3. That on or about the seventh day of February, eighteen hundred and sixty-seven, the said legislature duly passed, and the said governor duly approved, an act supplemental to said *to said* last-mentioned act, by which the said railroad company was authorized and empowered to extend their said proposed railroad to a point in the county of Hunterdon, in said State, between the villages of Milford and Frenchtown, in said county, as in and by said supplemental act on file in the office of the said secretary of state, or a duly certified copy thereof, will more fully appear, and to which for greater certainty your orator begs leave to refer.

4. That after the passing and approving the said original act of incorporation of said company, but at what particular date your orator is ignorant and cannot state, except that it was previous to the year eighteen hundred and sixty-eight, the incorporators named in said act duly met in pursuance of the provisions thereof, and opened books of subscription
26 to the capital stock thereof, and divers shares of such stock were subscribed, and the subscribers thereof duly organized themselves into a corporation under said act by electing a board of directors and officers as therein provided.

5. That afterwards, in or about the year eighteen hundred and sixty-seven, the said corporation caused to be surveyed and located a route for their proposed railroad, commencing at a point in the county of Union aforesaid, and running through said townships of Springfield and New Providence, up the valley of the Passaic, and through the said township of Bernards.

6. That afterwards, on or about the twenty-seventh day of June, eighteen hundred and sixty-eight, twelve and more freeholders of the said township of Bernards applied in writing to the circuit court of the county of Somerset for the appointment by said court, in pursuance of the act of said State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," of three freeholders, residents of said township of Bernards, to be commissioners of said township, to carry into effect the purposes and provisions of said act, and such proceedings were thereupon had that said circuit court, being then and there held by the honorable Vancleve Dalrimple, one of the justices of the supreme court of said State, did thereupon, and within ten days after such application, appoint, under his hand and seal, John H. Anderson, Oliver R. Stelle, and John Guerin, each of whom then was a freeholder and resident of said township, to be such commissioners under said act.

7. That afterwards, on or about the thirteenth day of July, eighteen hundred and sixty-eight, the said John H. Anderson, Oliver R. Stelle, and John Guerin did enter into bonds to the Inhabitants of the Township of Bernards, in the county of Somerset, in the penal sum of one hundred and thirty thousand dollars, with David L. Lewis, Henry Baird, John O. Rush, Bradner Guerin, and others, as sureties, conditioned that
27 the said Anderson, Stelle, and Guerin, as such commissioners, should faithfully discharge their duties as commissioners under said last-mentioned act, and should justly and honestly apply all moneys, stocks, and bonds issued by them or coming into their hands, according to the true intent and meaning of said act of the legislature; and said bond was thereupon duly approved by the township committee of said township of Bernards, and deposited with the clerk of said township, to be safely kept, under the direction and control of the township committee, and has so remained in the possession of the said town clerk ever since, as by refer ence to the said bond now in the possession of the clerk of said township, or a copy thereof, reference being thereto had, will more fully appear.

8. That afterwards, and in or about the month of July, eighteen hundred and sixty-eight, the said Anderson, Stelle, and Guerin entered upon the performance of their duties as such commissioners for said township of Bernards; and afterwards, on or about the seventeenth day of December,

eighteen hundred and sixty-eight, caused to be filed in the office of the clerk of the county of Somerset three certain paper writings annexed to each other, the bodies of which were copies of each other, and purporting, severally, to be signed by divers tax-payers of the said township of Bernards; to the first of which paper writing was attached an affidavit, made by said John H. Anderson before one James H. Thompson, justice of the peace of said county, to the effect that he was acquainted with each of the persons who had signed the said last-mentioned paper writing; that he was present and saw each of them sign the same as their voluntary act, for the uses and purposes therein expressed, and that they were severally fully informed of the contents thereof before signing the same; and to the second of said papers was attached a like affidavit, made by said John Guerin, of like tenor and effect; and to the third of said papers was attached a like affidavit, made by said Oliver R. Stelle; and to the said three paper writings was attached an affidavit, made by one William A. McMurtry, made in like manner before said James H. Thompson, justice of the
28 peace, to the effect that he was the assessor of the said township of Bernards, and in possession of said office and in discharge of the duties thereof, and that he had read the said paper writings and the names thereto severally annexed, and that he had carefully inspected the assessment roll of said township for the year eighteen hundred and sixty-seven, and was acquainted with the tax-payers of said township, and that the persons so signing said paper writings were a majority of the tax-payers of such township, and represented a majority of the real property of said township; and also were a majority of the tax-payers of such township appearing on the assessment roll of such township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they did represent a majority of the landed property of such township appearing on the assessment roll of said township for the year eighteen hundred and sixty-seven.

9. That the purport of the body of said paper writings so signed by said tax-payers and filed as aforesaid was that the persons so signing the same did thereby consent that the said commissioners so appointed for said township to carry into effect the provisions of said last-mentioned act of the legislature might, under the provisions of said act, borrow on the faith and credit of said township and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of said township, ascertained by the assessment roll thereof for the year eighteen hundred and sixty-seven), which money was to be invested, in compliance with the provisions of said act, in the stock of the said Passaic Valley and Peapack Railroad Company, and that the said commissioners might exercise full and complete powers for said township to carry into effect the purposes and provisions of said act; and said paper writings were dated July 17th, 20th, and 25th, respectively, as by the originals thereof on file in the office of the clerk of said county of Somerset or a certified copy thereof hereto annexed, will more fully appear.

10. That after the filing of said consent papers in said office of said clerk of said county of Somerset, and on or about the twenty-third day of December, eighteen hundred and sixty-eight, a copy thereof, certified
29 to be such under the hand and seal of said last-mentioned clerk, was duly filed with the town clerk of said township of Bernards.

11. That afterwards, on the first day of September, eighteen hundred and sixty-nine, the said Anderson, Stelle, and Guerin caused to be filed in the office of the clerk of said county of Somerset three other paper writings of the same tenor and effect as those last above mentioned, except that the amount of bonds to be issued was limited to the sum of one hundred and twenty-seven thousand dollars, and attached to each other in like manner, and each of which purported to be signed by divers persons purporting to be tax-payers of said township of Bernards; to the first of which was annexed an affidavit made by said John H. Anderson, and to the second an affidavit made by said John Guerin, and to the third an affidavit made by said Oliver R. Stelle, of like tenor and effect in all respects as those hereinbefore set forth, as being made by those persons respectively to said consent papers so previously filed with said county clerk; and also a further affidavit, made by said William A. McMurtry, to the purport and effect that he was, at the time of the making thereof, the assessor of the said township of Bernards, and was at that time in possession of the office and discharging the duties thereof; that he had read the said last-mentioned consent papers, and also similar consent papers so previously filed as aforesaid; and that he had also read and inspected the names thereto attached, and also the proof of the signatures thereto so made by said commissioners severally and annexed thereto; and that he had also carefully inspected the assessment roll of said township for the year eighteen hundred and sixty-seven, and that he knew the tax-payers of said township, and that the persons signing the said three consent papers so lastly filed as aforesaid, together with those who signed the said consent papers so previously filed, were, at that time, a majority of the tax-payers of said township of Bernards, and represented a majority of the real property of such township, and that the said persons so signing the said several consent papers were at that time a majority of the tax-payers of such township appearing on the assessment roll of said township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they did at that time represent a majority of the landed property of said township appearing on the said assessment roll for the year eighteen hundred and sixty-seven, as by the original of said last-mentioned consent papers, on file in the office of the clerk of said county of Somerset, or a certified copy thereof hereto annexed, will more fully appear.

12. That afterwards, on or about the day of September, eighteen hundred and sixty-nine, a copy of said last-mentioned consent papers, certified to be such under the hand and seal of said clerk of said county of Somerset, was duly filed in the office of the clerk of said township of Bernards.

13. That afterwards and before the first day of January, eighteen hundred and seventy, but on what particular day your orators are not informed and cannot state, the said Anderson, Stelle, and Guerin, acting in pursuance of the authority of said consent papers, and of the said last-mentioned act of the legislature, subscribed for twenty-five hundred and fifty shares, of the par value of fifty dollars each, of the capital stock of said Passaic Valley and Peapack Railroad Company, the same to be paid in installments, as called for by the directors of said railroad company, according to the provisions of the said charter of said railroad company, the par value of which amounted, in the whole, to the sum of one hundred and twenty-seven thousand dollars, which sum did not exceed ten per centum of the value of the landed value and real estate of said township which appeared

on the assessment roll of said township for the year eighteen hundred and sixty-seven.

14. That on or about the first day of January, eighteen hundred and sixty-nine, the said commissioners, acting in pursuance of the authority of said act of the legislature, and of said consent papers so filed, caused to be prepared divers bonds of the denominations of one thousand dollars, five hundred dollars, and one hundred dollars each, respectively, and amounting in the aggregate to one hundred and twenty-seven thousand dollars, with semi-annual interest coupons annexed thereto, at the rate of seven per cent. per annum, and providing for the payment of the principal money therein mentioned at various dates, ranging from six years
31 twenty-five years, and not more, from date, but the exact amount of each denomination prepared and afterwards issued as hereinafter stated, and the time fixed for payment of principal in each one, your orators are not informed and cannot state.

15. That the form of each of said bonds is as follows:

No. .] UNITED STATES OF AMERICA. [$.

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, STATE OF NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of Somerset, acknowledge themselves to owe to bearer five hundred dollars, which sum they promise to pay the holder hereof, at the American Exchange National Bank in the city of New York, twenty-three years after the date hereof, and interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of July and January in each year, until the said principal sum shall be paid, on the presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

In testimony whereof the undersigned, commissioners of the said Township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed, commissioned, and sworn, have hereunto set our hands and seals the first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

(On right margin:) Five hundred dollars.
(On left margin:) Five hundred dollars.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

32 (Coupon annexed.)

Five hundred dollars.

$17.50.

The Inhabitants of the Township of Bernards, in the county of Somerset, will pay the bearer at the American Exchange National Bank, in the city of New York, seventeen $\frac{50}{100}$ dollars on the first day of January, 1889, for six months' interest on bond No.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

16. That the said bonds were each of them duly registered in the office of the clerk of said county of Somerset, and the words "Registered in the county clerk's office" were printed on the face of the same, and signed by and in the proper handwriting of William Ross, jr., clerk of said county of Somerset, and each of said bonds was signed by and in the proper handwriting of said John H. Anderson, John Guerin, and Oliver R. Stelle, as commissioners aforesaid.

17. That after the first day of September, eighteen hundred and sixty-nine, the said commissioners took measures to negotiate and dispose of said bonds so prepared and signed by them and so registered in the county clerk's office, and did negotiate and dispose of the same from time to time, and at various times, and in various parcels, but what particular means and measures were adopted for so negotiating and disposing of said bonds, and upon what terms the same were negotiated and disposed of, your orators are not informed and cannot state; but charge the truth to be that the same were, in point of fact, all negotiated and disposed of by said commissioners in the open market, and with the proceeds thereof the said commissioners paid to said Passaic Valley and Peapack Railroad Company the sum of one hundred and twenty-seven thousand dollars in payment for their said subscription to said twenty-five hundred and forty (2540) shares of the capital stock of said railroad company.

18. That afterwards, and some time in the year eighteen hundred
33 and seventy, a certificate of twenty-five hundred and forty (2,540) shares, of fifty dollars each, of the capital stock of said Passaic Valley and Peapack Railroad Company was duly issued under the corporate seal of the same, and signed by John H. Lyon, its president, and Beverly C. Sanders, its secretary, to the inhabitants of the township of Bernards, in the county of Somerset, certifying that said township was entitled to said last-mentioned number of shares in the capital stock of said company, and was duly delivered to said Anderson, Stelle, and Guerin, commissioners as aforesaid.

19. That said commissioners have held said stock ever since, and voted on the same at all meetings of stockholders, and said township, through said commissioners, have at all times enjoyed all the benefits of ownership of said stock.

20. That said railroad company, during the years 1869 and 1870, caused to be built and put in operation a railroad leading from a point on the line

of the Morris & Essex Railroad, near Summit, in the county of Union, through the township of New Providence, in said last-mentioned county, and the township of Passaic, in the county of Morris, and extending into said township of Bernards, in said county of Somerset, entering the same at a point about two and a half miles in a southeasterly direction from the village of Baskingridge, and passing through said last-mentioned village to the village of Bernardsville, in said county, a distance, in all, of about five miles in said county, and which railroad, so constructed, had a switch connection with the track of the Morris & Essex Railroad at said point near Summit aforesaid, and for the past three years regular passenger and freight trains have been run over said Passaic Valley and Peapack Railroad daily to and from said village of Bernardsville to Summit aforesaid, and thence over the track of the said Morris & Essex Railroad, by way of the city of Newark, to the city of New York, and the citizens, inhabitants of said township of Bernards, have derived great benefit therefrom, and the taxable property of said township has been greatly increased thereby; and your orator charges that the increase in the ratables of said township, resulting from the building and operating of said Passaic Valley and Peapack Railroad has been at least twenty per cent.

34 21. That said Passaic Valley and Peapack Railroad Company, after completing said railroad from Bernardsville to a point near Summit as aforesaid, proceeded with the work of grading and excavating for a continuation thereof to the city of Newark, and expended a large sum of money thereon, and nearly completed the grading of the same for a distance of about six miles from the point of intersection of the track thereof near Summit aforesaid towards the city of Newark, when the work was brought to a standstill by the financial revulsion of the year eighteen hundred and seventy-three, and under the circumstances hereinafter stated.

21 (*a*). That on or about the fifteenth day of February, eighteen hundred and seventy, the legislature of the State of New Jersey passed an act, and the governor of said State approved the same, entitled "An act to change the name of the Passaic Valley and Peapack Railroad Company," by which it was enacted that the name of said corporation should be changed to and said corporation should thereafter be known by the name of the "New Jersey West Line Railroad Company," and that said corporation should continue to be the same corporation as heretofore, and all the rights, powers, privileges, and obligations of and pertaining to said corporation by virtue of any law of said State should be and remain the same under and in the said new name as if the same had not been changed. And your orator begs leave to refer to said act on file in the office of the secretary of state of New Jersey, or a certified copy thereof, for greater certainty.

22. That some time in the year eighteen hundred and seventy-two, but at what particular time your orator does not know and cannot state, one Asa Packer, of the State of Pennsylvania, together with other persons associated with him, all of whom were largely interested in the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, became desirous of procuring a charter to construct a railroad across the State of New Jersey from the Delaware River to New York, for the purpose of forming a continuation of said Lehigh Valley Railroad across

said last-mentioned State, and with that view obtained control of a
35 majority of the stock of said Passaic Valley and Peapack Railroad Company, now the New Jersey West Line Railroad Company, and voted themselves into the offices, and assumed the control thereof. That the said commissioners assisted said Packer and his said associates in their said project, and voted according to their wishes at all meetings of stockholders on an agreement with said Packer and his associates that he and they should take from said township its said stock in said railroad, and pay said bonds so by them issued, or in some manner indemnify said township against their payment. That said Packer and his associates were men of great wealth, and controlled a large amount of *of* capital, and were entirely responsible for their undertaking in that behalf.

23. That early in the year eighteen hundred and seventy-three one Benjamin F. Beekman, a wealthy capitalist of the city of New York, became desirous of obtaining control for himself and certain other persons associated with him of the capital stock and direction of said Passaic Valley and Peapack Railroad, now the New Jersey West Line Railroad Company, and for that purpose applied to said Anderson, Stelle, and Guerin for their influence and votes in stockholders' meeting in that behalf; and thereupon an agreement and undertaking in writing, under seal, was entered into and made by said Beekman by which said Beekman agreed and undertook, for a good and valuable consideration, to idemnify and save harmless said township of Bernards against the payment of the principal and arrears of interest coupons due and to grow due on all of said bonds, and delivered said undertaking to said commissioners, and the same is now in their possession or the possession of one of them; but your orator cannot give the date and exact language of the same, because he has been refused access thereto by said commissioners, but he charges that the same furnishes full and complete indemnity to said township against said bonds, and in effect assumes their payment, and is at this time a good, valid, and binding agreement.

24. That afterwards, in and during the year eighteen hundred and seventy-three, the said commissioners, acting for said township, sold
36 and assigned to said Benjamin F. Beekman eighty-eight shares of the par value of four thousand and four hundred dollars of the capital stock of said railroad company, and received in payment therefor an equal amount, in the aggregate, at their par value, of the said bonds so issued by them, but the numbers and amounts of the several bonds so by them received your orator does not know and cannot state.

25. That the said Benjamin F. Beekman made an effort to complete said railroad from said point of intersection with the Morris & Essex Railroad near Summit to Newark, but failed therein for want of sufficient capital; and afterwards, on or about the day of February, eighteen hundred and seventy-five, departed this life, having first duly made and published his last will and testament, in and by which he did appoint his widow, Catharine Adelaide Beekman, J. Reeve Vanderveer and William Z. Larned executors thereof, who afterwards, on or about the twenty-first day of March, eighteen hundred and seventy-five, duly proved the same before the surrogate of the county of Union, in said State of New Jersey, and letters testamentary thereon were thereupon granted to them by said surrogate, and your orator shows that the said executors have possessed themselves of the estate of said deceased, and now have the same in hand,

and the same is ample to answer to the said undertaking of said Benjamin F. Beekman.

26. That your orator, previous to the year eighteen hundred and seventy-two, became, and was, and still is the lawful owner and holder of divers of said bonds so issued by said commissioners of the tenor and effect hereinbefore set forth, and of the serial numbers and amounts, and payable at the several times hereinafter stated, that is to say:

	No. 6	for	$1,000	at	7	years.
	" 11	"	$1,000	"	9	do.
	" 12	"	$1,000	"	9	do.
	" 13	"	$1,000	"	9	do.
	" 14	"	$1,000	"	10	do.
	" 17	"	$1,000	"	10	do.
	" 18	"	$1,000	"	10	do.
37	No. 19	for	$1,000	at	11	years.
	" 21	"	$1,000	"	12	do.
	" 22	"	$1,000	"	12	do.
	" 23	"	$1,000	"	12	do.
	" 24	"	$1,000	"	12	do.
	" 27	"	$1,000	"	13	do.
	" 36	"	$1,000	"	16	do.
	" 37	"	$1,000	"	16	do.
	" 45	"	$1,000	"	19	do.
	" 68	"	$500	"	6	do.
	" 87	"	$500	"	11	do.
	" 88	"	$500	"	11	do.
	" 89	"	$500	"	11	do.
	" 94	"	$500	"	13	do.
	" 95	"	$500	"	13	do.
	" 96	"	$500	"	13	do.
	97	"	$500	"	13	do.
	" 99	"	$500	"	14	do.
	" 100	"	$500	"	14	do.
	" 101	"	$500	"	14	do.
	" 118	"	$500	"	19	do.
	" 150	"	$100	"	6	do.
	" 157	"	$100	"	7	do.
	" 158	"	$100	"	7	do.
	" 159	"	$100	"	7	do.
	" 167	"	$100	"	7	do.
	" 168	"	$100	"	8	do.
	" 174	"	$100	"	8	do.
	" 175	"	$100	"	8	do.
	" 176	"	$100	"	8	do.
	" 180	"	$100	"	9	do.
	" 182	"	$100	"	9	do.
	" 245	"	$100	"	15	do.
	" 247	"	$100	"	15	do.
	" 258	"	$100	"	16	do.
	" 259	"	$100	"	16	do.
	" 359	"	$100	"	25	do.

27. That each of said last-mentioned bonds is in the form and of
38 the tenor and effect hereinbefore for that purpose set forth, and was duly registered in the office of the clerk of the county of Somerset, and is duly endorsed by said clerk in the manner herein before for that purpose mentioned, and was duly issued by said commissioners as herein before set forth, and that so far as your orator knows the history of said bonds so held by your orator is as follows: Numbers sixty-eight, one hundred and fifty-seven, one hundred and fifty-eight, and one hundred and fifty-nine were purchased by one Lewis C. Burroughs of one Moses A. Brookfield, of Morristown, New Jersey, a broker and dealer in moneyed securities, and by said Burroughs were assigned and transferred to your orator; number thirty-six was purchased by one Charles H. Mulford of said Moses A. Brookfield, and by said Mulford transferred and delivered to your orator; number eighty-nine was purchased by one Hampton O. Marsh of one Richard Smith, of Hanover, New Jersey, who was also a broker and dealer in moneyed securities, and by said Marsh transferred and delivered to your orator; numbers twenty-two, twenty-three, and twenty-four were purchased by one Henry Ball of said Richard Smith, and by said Ball transferred and delivered to your orator; numbers seventeen and eighteen were purchased by your orator of Messrs. V. B. King & Co., brokers, Wall st., New York City; numbers thirteen and thirty-seven were purchased by one Edwin Ford of said Richard Smith, and by said Ford transferred and delivered to your orator; numbers six, fourteen, eighty-eight, one hundred and one, one hundred and sixty-seven, one hundred and sixty-eight, one hundred and seventy-four, one hundred and seventy-five, and one hundred and seventy-six were purchased by one James J. Cooper of said Richard Smith, and by said Cooper transferred and delivered to your orator; numbers eleven and twelve were purchased by one James Holmes of said Moses A. Brookfield, and by said Holmes transferred and delivered to your orator; numbers nineteen and eighty-seven were purchased by one Matthew Mitchell of said V. B. King & Co., and by said Mitchell transferred and delivered to your orator; numbers ninety-four, ninety-five, ninety-six, ninety-seven, ninety-nine, and one hundred were purchased by one Horace B. Stone of one Daniel D. Craig, who was
cashier of a bank, and by said Stone were transferred and delivered
39 to your orator; numbers one hundred and fifty, one hundred and eighty, and one hundred and eighty-two were purchased by one George A. Lawrence, of , and by said Lawrence transferred and delivered to your orator; numbers two hundred and forty-five, two hundred and forty-seven, and three hundred and fifty-nine were purchased by one J. L. Welling of Messrs. Parker & Lawrence, brokers, of Wall st., New York City, and by said Welling transferred and delivered to your orator; number twenty-seven was purchased by said Welling of one John Buckley, broker, of New York City, and by said Welling transferred and delivered to your orator; number forty-five was purchased by one G. K. Nancy of said Parker & Lawrence, and by said Nancy transferred and delivered to your orator; number one hundred and eighteen was purchased by one W. J. Sly of said Parker & Lawrence, and by said Sly transferred and delivered to your orator; numbers two hundred and fifty-eight and two hundred and fifty-nine were purchased by one Silas C. Young of said Parker & Lawrence, and by said Young transferred and delivered to your orator.

28. That in the case of each of the purchasers in the next preceding paragraph stated a full and valuable consideration, in cash, was paid by said purchasers for said several bonds, the amount whereof in each particular case your orators are unable to state, but charges the truth to be that it amounted to about ninety cents on the dollar of the face of said several bonds.

29. That the interest coupons in said several bonds were duly paid by said township up to and including the coupons due January 1, 1871, after which time no further payments of interest coupons were made, and on and after the first day of January, eighteen hundred and seventy-four, there being then three years in arrears on the said bond so held by your orator. Your orator on or about the day of April, eighteen hundred and seventy-four, commenced an action at law in a plea of debt in this court against the said township of Bernards to recover the said arrears of interest; that said township was duly served with the process of this court, and duly appeared to said action; that your orator duly filed his declaration
40 therein and the said township demurred thereto, which demurrer was afterwards overruled, and the said township thereupon, by leave of the court, filed a plea to said declaration, in and by which said township set up as a defence to said action *of* law that said several bonds so held by your orator, and to recover the arrears of interest on which said action at law was brought, were not sealed by said commissioners, and your orator admits that on inspecting said several bonds, although each of them, in the attestation clause thereof, declares that it has been sealed by said commissioners, and each of them is signed in the proper handwriting of each of said commissioners, yet in point of fact no seals are found thereon.

30. And your orator further shows that as soon as said defence was so interposed in said action at law he called on said Oliver R. Stelle and John Guerin, two of said commissioners, the said John H. Anderson having died in the mean time, and requested them to affix their seals to said several bonds so held by him; that said Stelle and Guerin declined so to do unless by the order and direction of some court of competent jurisdiction; that at the same time the said commissioners stated to your orator what your orator charges the truth to be, that said several bonds were duly issued by them in pursuance of the power and authority in them for that purpose reposed, and in perfectly good faith; that said township of Bernards had secured the full benefit and consideration therefor contemplated by law, and that the failure to affix seals thereto was a pure oversight and accidental omission.

31. Your *honor* shows that it is inequitable, unjust, and contrary to good conscience for said township, under the circumstances hereinbefore set forth, to set up as a defence to the payment of said several bonds and the several interest coupons thereto annexed the fact that the same were not actually sealed by said commissioners; and that your orator, as bona fide holder and bearer of the same, for a valuable consideration therefor paid, is, under said circumstances, entitled in equity to have said several bonds held, treated, and considered at all times, and in all places, and under all circumstances, to be as valid and effectual in the law as
41 the same had been actually sealed by said commissioners before being issued, and is also entitled to have the same reformed by actually affixing thereto at this time the seals of said commissioners, which

seals so to be affixed shall have the same force and effect as if so affixed before said bonds were issued by said commissioners.

Wherefore your orator prays the aid of this court in the premises.

To the end, therefore, that the said defendants the Inhabitants of the Township of Bernards, in the county of Somerset, Oliver R. Stelle, John Guerin, Catherine Adelaide Beekman, J. Reeve Vanderveer, and William Z. Larned may, if they can, show cause why your orator should not have the relief hereby prayed, and may answer all and singular the premises, but not under oath, an answer under oath being waived, and that the said several bonds so held by your orator, and hereinbefore particularly mentioned, may be reformed as aforesaid, and the said The Inhabitants of the Township of Bernards, in the county of Somerset, and the said Oliver R. Stelle and John Guerin, or one or some of them, may be decreed and directed by this court to affix to said bonds, opposite the signatures of said John H. Anderson, Oliver R. Stelle, and John Guerin, their seals or scrolls, or other devices in the nature of and equivalent in law to seals, and that it may be declared and decreed by this court that the said several bonds shall at all times and in all places and for all purposes be held, deemed, and taken to be valid and effectual in the law in all respects the same and to the same extent as if the same had been actually and in fact sealed by said commissioners before the issuing of the same; and that the said The Inhabitants of the Township of Bernards, in the county of Somerset, may be perpetually enjoined and restrained by the decree of this court from setting up, alleging, or pretending as a defense in said suit at law so brought by your orator in this court, or in any other suit at any time hereafter to be brought by your orator in any court to recover the principal or interest, or any part thereof due or to grow due on said bonds, that the said bonds or any of them were not actually sealed by said commissioners before being issued by them, and that your orator may
42 have such further and other relief as may be agreeable to equity and good conscience.

May it please your honors, the premises considered, to grant unto your orator not only a writ of injunction of the United States of America, to be issued out of and under the seal of this honorable court, and directed to the said The Inhabitants of the Township of Bernards, in the county of Somerset, its agents and attorneys, enjoining and restraining them as is hereinbefore prayed, but also the writ of subpœna of the United States, to be issued out of and under the seal of this court, and directed to the said The Inhabitants of the Township of Bernards, in the county of Somerset, the said Oliver R. Stelle, John Guerin, Catharine Adelaide Beekman, J. Reeve Vanderveer, and William Z. Larned, commanding them and each of them, on a certain day, and under a certain penalty therein to be expressed, personally to be and appear in this court, to answer all and singular the premises, and to stand to, abide, and perform such decree as to your honors shall seem meet, and shall be agreeable to equity and good conscience, and your orator, as in duty bound, will ever pray, &c.

H. C. PITNEY,
Solicitor and of Counsel with Complainant.

43 United States circuit court, district of New Jersey. In equity.

BETWEEN CYRUS CURTISS, COMPL'T,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the County of Somerset, et als., def't.

The answer of the Inhabitants of the Township of Bernards, in the county of Somerset, to the bill of complaint of Cyrus Curtiss, complainant.

This defendant, now and at all times hereafter, saving and reserving to itself all manner of benefit and advantage of exception to the many errors, uncertainties, and defects in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as it is advised is material for it to make answer unto, it answers and says:

1. That while the said Cyrus Curtiss, for anything known to the defendant, may be a citizen and resident of the State of New York, yet said complainant as to the principal part of the claims sought to be enforced in this honorable court by means of this suit is a mere trustee for divers citizens and residents of the State of New Jersey, in which claims said Curtiss has no legal or equitable right or title whatsoever, and as to
44 them has no right to institute or prosecute this suit in this honorable court; that the citizens and residents of New Jersey, whose claims are being prosecuted in this honorable court in the name of said Curtiss, are Louis Burrows, Charles H. Mulford, Hampton O. Marsh, Henry Ball, V. B. King and Company, Edwin Ford, James J. Cooper, George A. Lawrence, James Holmes, Matthew Mitchell, Horace B. Stone, Daniel D. Craig, J. L. Welling, G. R. Nancy, W. J. Sly, Silas C. Young, and other persons whose names at the present are unknown to this defendant.

1. A. As to the facts stated in the first paragraph of said bill, this defendant admits the statement of facts contained in this paragraph of said bill.

3. This defendant admits the facts stated in the third paragraph of said bill.

4. This defendant cannot admit or deny the facts stated in the fourth paragraph of said bill.

5. This defendant admits that the said railroad corporation did locate a railroad, or a part of a railroad, substantially as stated in the fifth paragraph of said bill; the precise time of making said location this defendant cannot state.

6. This defendant admits that on or about the 27th of June, 1868, the judge of the circuit court of the county of Somerset did appoint John H. Anderson, John Guerin, and Oliver R. Stelle, who were residents of Bernards Township, to be, as was said, commissioners of said township to carry into effect the purposes and provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and to take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, but this defendant saith that said act of the legislature was not asked for, or procured, by this defendant, but was asked for and procured by the said Passaic Valley and Peapack Railroad Company;

that this defendant did not apply for or authorize application to be
45 made for the appointment of said commissioners, or for any commissioners, for the purpose for which said commissioners were appointed; but said commissioners were applied for at the request and by the procurement and for the uses and purposes of the said railroad company, and that this defendant was in no way or manner a party, but was an entire stranger to the appointment of the said commissioners; that said commissioners were not and never have been officers chosen or appointed by this defendant, nor have said commissioners at any time acted by or under the authority or direction of this defendant. This defendant at no time has had any power to direct or control said commissioners, nor has it at any time, or in any way, or for any purpose, directed or controlled the actions or omissions of the said commissioners; but whatever the said commissioners have done since their said appointment in and about the pretended execution of the last-mentioned act of the legislature has been done independently of any power or authority conferred or obtained from this defendant.

This defendant does not admit, but denies the legality and the regularity of the appointment of the said commissioners, and among other reasons because John H. Anderson, one of the said commissioners, at the time of his appointment as such commissioner was one of the directors of said railroad company for at least two years afterwards; and this defendant further says that if this defendant can be bound or affected at all by any act of the said commissioners, it can be only by such of their acts as are in strict conformity to and in compliance with the letter and spirit of the last-mentioned act of the legislature; and that there is not any ground for holding this defendant liable or answerable for any of the acts of the said commissioners, except on the ground of express, arbitrary, statutory enactment. The whole proceedings of said commissioners, so far as this defendant is concerned, have not been sought or assumed by, but imposed upon, this defendant, which act it prays may be referred to and used as if the whole of said act were embodied in this paragraph of this answer.

7. This defendant supposes the allegations contained in the 7th paragraph of said bill to be substantially true, but it is not particularly informed in respect thereof.

46 8. This defendant admits that the said commissioners, on the 17th day of December, 1868, did cause to be filed in the clerk's office of the county of Somerset the consents and affidavit mentioned in the 8th paragraph of said bill. It further says that the consents, appearing by said Anderson's affidavit, were 108, by said Guerin's affidavit 114, and by said Stelle's affidavit 14, making, in all, the consents of 236 persons.

This defendant further saith that the number of the persons who were tax-payers in the said township of Bernards in the year 1867, appearing on the assessment rolls of said township for that year, were 804, and of that 449 were taxed for lands, and were therefore prima facie land-owners. This defendant further saith that the affidavits of the assessors of said township, referred to in the 8th paragraph of said bill, and a printed copy of which is annexed to said bill of complaint, which affidavit purports to have been made on the 19th of September, 1868, was not true in fact; while the truth was that a majority of the tax-payers of said township for the year 1867 had not signed such consents; and the truth also that not many over $\frac{1}{4}$ of the tax-payers of said township for the year 1867 had signed

said consents. And this defendant further saith that all and every of said commissioners had long resided in said township, and well knew the inhabitants thereof, and all of them knew that the signers to said consents did not constitute a majority of the tax-payers of said township in the 1867.

This defendant further saith that the mode of obtaining the consents of the tax-payers of said township, for the purposes of the last-mentioned act of the legislature, provided in said act, was and is unfair and unjustifiable, and was devised and contrived by the officers and agents of the said railroad company, or some of them, for the purpose of deceiving and imposing on the tax-payers of said township, and for the purpose of furnishing an opportunity to get such consents from the tax-payers on ex parte interested statements, without affording the tax-payers an opportunity to get informed and to understand the nature, effect, and consequences of such consents. This defendant further says that before such consents were applied for the officers, agents, and retainers of the said railroad company said and caused to be generally circulated
47 among the people of said township that if the bonds of said township were issued for the purpose of aiding the construction of said railroad, the said township would have the first lien upon all the property of said railroad to secure it for the bonds it should issue; that the said railroad company would pay the interest of the said bonds without any recourse therefor to said township until said railroad company should pay dividends of seven per cent. per annum on its stock; that then the dividends received by said township on its stock should pay the interest on its bonds, and that the said stock could be sold for enough or more than enough to pay the principal of said bonds; that a large portion of said tax-payers were uninformed and inexperienced as to such matters, and were not called to any public meeting of the inhabitants of said township at which to discuss and vote upon the giving of such consent, and therefore many of them when called upon at their houses and persuaded by the friends and agents of said railroad company to sign said consents, did so under misapprehension and in utter ignorance of the consequences and effects of signing said consents. This defendant further insists and submits that the aforesaid affidavit of the assessor is palpably defective and insufficient, because it does not state the number of tax-payers on the assessment rolls in said township in the year 1867, nor whether the signers of said consents represented a majority in acres or in value of the landed property in said township.

And this defendant in this connection respectfully calls the attention of this honorable court to the terms of the said consents, and to the fact that said consents were that said commissioners, under the permission of said act, might borrow on the faith and credit of said township, and execute bonds for the same, *of* one hundred and thirty thousand dollars, which money was to be invested in compliance with the provisions of said act in the stock of the said railroad company, and that no consent was given to issue any bonds except in exchange for money actually lent to said commissioners, and that no consent was given to issue any bonds to be exchanged for stock in the said railroad company or any exchange for anything but money.

48 9. The terms *of* said consents are substantially stated in the 9th paragraph of said bill, but for greater certainty this defendant prays

leave to refer to duly authenticated copies of said consents if occasion shall require.

10. This defendant denies the allegations in the 10th paragraph of said bill, but says that it believes it to be true that some time after the 23d day of December, 1868, the exact time being unknown to this defendant, copies of the papers mentioned in this paragraph were left with the clerk of said township, but were never in fact filed.

11. This defendant admits that on the first day of September, 1869, the said commissioners did file in the clerk's office of the county of Somerset what purported to be consents and affidavits, which to some extent are correctly described in the eleventh paragraph of said bill, by which it appears that 196 persons, alleged to be tax-payers in the said township of Bernards, in the year 1867, did consent that the said commissioners might, under the provisions of the said last-mentioned act, borrow on the faith and credit of said township and execute bonds of the same for one hundred and twenty-seven thousand dollars, which money was to be, in compliance with the provisions of said act, invested in the stock of said railroad company; this defendant respectfully submits that said last-mentioned consents were and are in all respects illegal, nugatory, and of no force and effect for any purpose whatsoever; that the alleged signers of said consents, in the year 1869, had no power or right to give such consents as of or for the year 1767 or 1868; that the affidavit of the said assessor annexed to said last-mentioned consents is wholly insufficient; that it does not show that the persons who signed the last-mentioned consents constituted a majority of the tax-payers of said township in the year 1867, nor does it refer to any previous consents given by other persons in such way or manner as to show that the consents given in 1869, added to the consents given in 1868, constituted a majority of the tax-payers of said township; this defendant respectfully submits that said last-mentioned consents, that is, the consents of 1869, looked at as original
49 consents, were illegal and wholly insufficient, and if looked at as a ratification or confirmation of consents illegal and insufficiently given in the year 1869, they are illegal and of none effect whatever, because they do not purport or pretend to be, nor can they operate as, a confirmation or ratification of any act or acts previously illegal or insufficiently performed; this defendant further respectfully submits that the consents so as aforesaid given in 1868 and in 1869 were not the consents of a majority of the tax-payers of said township within the meaning of the said act of the legislature, nor were said consents verified in the manner described and required by said act, nor did said consents furnish any right, power, or authority for anything done by the said commissioners in or about the issuing of the papers which in the said bill of complaint are called bonds of said township.

12. This defendant admits that such papers as are mentioned in this paragraph were left with the clerk of the said Township of Bernards some time after the 11th of September, 1869, the exact time being unknown to this defendant, but they were never filed by said clerk.

13. This defendant has been informed, and believes the fact to be, that on the day of , 1868, the said commissioners did subscribe for twenty-five hundred and forty shares of the capital stock of the said railroad company, of the nominal par value of fifty dollars a share; but this

defendant denies that the said commissioners had any power or right to make any such subscription, because at the time when the said subscription was made the said commissioners, on the faith and credit of said township, had not borrowed any sum of money whatever, nor could they then borrow on the faith and credit of said township at a rate of interest not exceeding 7 per cent., for the purpose of investing in the stock of said railroad company, any sum of money whatever, and until the said commissioners had actually borrowed money for the purpose of investing it in the stock of said railroad company they had no power, right, or authority as commissioners as aforesaid to subscribe for or to purchase any of the stock of said
50 railroad company; and, therefore, the said stock subscription was ultra vires and void; nor, as the said commissioners and as the officers of the said railroad company well knew, had a majority of the taxpayers of said township at the time said stock subscription was made in writing according to the provisions of the said act, given their consent to the purchase of said stock, nor to the borrowing of money for that purpose, and for that reason, also, said stock subscription was ultra vires and void.

14. And this defendant, in answer to the fourteenth paragraph of said bill of complaint, says that it has been informed, and believes it to be true, that on or about the first day of January, 1869, the said commissioners did prepare and sign certain paper writings in the form of bonds, a specimen of which is set out in the fifteenth paragraph of said bill; that there are about three hundred and sixty-five of said so-called bonds, all bearing date the first of January, 1869, some for one thousand dollars, some for five hundred dollars, and others for one hundred dollars, amounting in the aggregate to twenty-seven thousand five hundred dollars; but said paper writings were never sealed by the said commissioners, nor by them marked with any device or sign to represent a seal.

This defendant further says that the said commissioners never registered said so-called bonds, or any of them, in the clerk's office of the county of Somerset. Such of them as have been pretended to be registered in said last-mentioned office were procured to be registered by the said railroad company or some of its officers or agents, or by persons to whom said railroad company transfered said so-called bonds.

This defendant further saith that it has been informed and believes, and charges it to be true, that soon after the said so-called bonds were signed by said commissioners they were all delivered to and put in the possession of Daniel D. Craig, who was the treasurer of said railroad company, and that said Craig delivered said bonds to said railroad company, or to its officers or contractors, from time to time, as he saw fit, or as the said railroad company or its officers directed, and mainly in part payment of work done on said railroad by contractors, who sold them to such persons as would buy the same, and that all of said bonds were thus disposed of by said railroad
51 company for its own uses and purposes before the first day of September, 1869. That said commissioners, or any of them, never sold, assigned, nor transferred any of said so-called bonds to any person whatsoever, except the said railroad company; that it never received any money whatsoever from any person whomsoever for any of said bonds, and that said commissioners for any of said so-called bonds never received anything whatsoever from said railroad company, except the said twenty-

seven hundred and fifty shares of its capital stock, which never had any intrinsic value whatsoever. And that the said Inhabitants of the Townships of Bernards, in the county of Somerset, have never received anything whatsoever in consideration for said so-called bonds, and that so far as this defendant is concerned said so-called bonds are wholly without consideration and without any legal authority to support them. And this defendant further respectfully submits that the said commissioners had no right to deliver said so-called bonds, or any of them, to the said railroad company, nor had the said railroad company any lawful right to receive them, or any of them, because both parties to the transaction were fully acquainted with the nature and extent of the powers of the said commissioners, and both perfectly well knew that the majority of the tax-payers of the said township had not consented to the issuance of the said so-called bonds, or of any bonds, for any such purpose; both well knew that said commissioners had not issued said bonds for any money borrowed by them at a rate of interest not exceeding seven per cent.; both knew that said bonds had not been sold, and could not be sold, and were not to be sold for money, and both of said parties well knew that said commissioners had no lawful right or authority to exchange said bonds with said railroad company for the stock of said company.

15. This defendant admits that the said so-called bonds were in the form shown by the said fifteenth paragraph of said bill; that it is true that said so-called bonds upon their face said that they were sealed with the seal of the said commissioners, and this defendant therefore respectfully submits that when it appeared upon the face of every so-called bond that they were without any seal, or semblance of a seal, that that was
52 plenary notice to all persons dealing in said so-called bonds that they were in an unfinished and incomplete condition, and was notice to them that said bonds were not ready for negotiation or circulation, and had been prematurely and improperly issued and put upon every person attempting to deal with said so-called bonds an obligation to go to said commissioners to make inquiry relative to said so-called bonds, and if any person dealt with said bonds without making such inquiry he did so at his peril, and he alone is to blame for the consequences of purchasing an unauthorized, incomplete, and illegal instrument.

16. In answer to the 16th paragraph of said bill, this defendant denies that the said so-called bonds were ever registered according to the true intent and meaning of the said act of the legislature, and it says the facts as to how said so-called bonds came to be registered are as herein before in this answer stated.

17. This defendant denies the allegations contained in the seventeenth paragraph of said bill, and says that the truth is that the said commissioners never did negotiate the said so-called bonds, or any of them, in any way or manner, except to deliver them to said Craig for the use of the said railroad company as herein before stated, and that said so-called bonds were disposed of by said railroad company as it saw fit; but this defendant is informed, and charges the truth to be, that said company and its agents disposed of said so-called bonds in every case at a large discount or deduction, so that said railroad company, from said so-called bonds, did not realize any money more than seventy-five cents on the dollar of the nominal amount of said so-called bonds, and by means of said so-called bonds for the pur-

pose of the construction of said railroad did not obtain more, if so much as, three-fourths of the money named in the said so-called bonds, the effect of which would be, if this defendant shall be required to pay the said so-called bonds, to oblige the defendant to pay for the money put into the railroad company on its account interest exceeding 9 per cent. per annum, instead of 7 per cent., as required by the said act of the legislature.

And this defendant charges that said complainant, and every of
53 the persons owning any of the said so-called bonds, for and on account of which this suit is brought and prosecuted, before he or they received any of said bonds knew and had notice of, and had reasonable cause and ground to believe, that said commissioners had no power or right to issue the said so-called bonds, and that their being in the market was due to an excess of authority by the said commissioners, and to undue, unlawful, and inequitable means used by the said railroad company to obtain the issuance and possession of the said so-called bonds; and this defendant denies that the said complainant, and it also denies that any of the said persons who are represented in this suit by the said complainant, is a bona fide owner, on valuable consideration paid, without notice of the aforesaid faults and defects of said pretended bonds, and especially did said complainant, and every owner of said so-called bonds, know that said bonds had not been issued for money, but to said commissioners, and every of them well knew that it was impossible for the said commissioners to have borrowed any considerable sum of money, at seven per cent. interest, on said bonds, because the market was well supplied with better bonds at better rates.

18. This defendant has been informed, and supposes the fact to be, that a certificate for said two thousand four hundred and forty shares of stock was issued by the said railroad company and delivered to the said commissioners, but where that was done this defendant does not know, but says that it was illegally done whenever it was done; that this defendant is ignorant of the contents of said certificate, and does not know to whom upon its face the same purports to be issued, and it leaves the said complainant to make such proof thereof as he may be advised is necessary.

19. This defendant supposes that the said commissioners still hold the said stock, or the principal part thereof, but it is not now, nor has it ever been, of any value, utility, or benefit whatever to this defendant. This defendant further saith, as herein before stated, that a large portion of the persons who signed the aforesaid consents were induced to do so by the representations made by the officers and agents of the said railroad
54 company that said railroad was without any mortgages on it, and that said railroad company had no power to mortgage its railroad franchise, and that the holders of the stock of said company, including said township, would have first claims upon the property and franchises of said company, and that the interest upon bonds of the said township proposed to be issued would be paid by the said railroad company until the dividends upon the stock of said township should be sufficient to pay the interest of its bonds; that then said interest would thereafter be paid by said dividends. But after said consents had been obtained, and after said railroad company had attained possession of said so-called bonds, and after it had disposed of them as herein before stated, the said railroad company made application to the legislature of New Jersey for an act authorizing it to mortgage its railroad and franchises as security for bonds thereafter to be issued

by said railroad company, and obtained said act, which was entitled "Supplement to an act entitled 'An act to charter the Passaic Valley and Peapack Railroad Company,' approved March 29th, 1865, and its several supplements, approved February 7th, 1867, and April 9th, 1868," and was approved March 16th, 1869, as by reference to said act, leave of reference to which is hereby prayed, will more fully and at large appear.

That by authority of said last-mentioned act the said railroad company, on or about the 11th of March, 1870, did execute and deliver to Theodore F. Randolph and Benjamin G. Clark, trustees, a mortgage of all its property and franchises to secure coupon bonds of said company to the amount of three million dollars, which mortgage bears date the day and year last aforesaid, and was recorded in the clerk's office of the said county of Somerset on the 15th day of March, 1872, in book C 2 of mortgages, page 576, &c., as by reference to said mortgage, or duly certified copy thereof, leave of reference to which is hereby prayed, will more fully and at large appear. That immediately after the execution of said mortgage the said company did issue its coupon bonds to an amount exceeding two million dollars, which went into the hands of divers persons who claimed to have purchased the same, and to be lawful holders thereof; that said railroad company paid very little, if any, interest on any of its said bonds, and all the interest thereon, or nearly all, remains wholly unpaid, and all the property of said company and its franchises are not worth and will not produce one-third of the amount of principal and interest now owing on the said bonds of said company. That said company, in the year 1870, or before that time, became and was, and ever since has been, hopelessly insolvent; that on the 16th of February, 1874, the property of said company was put into the hands, possession, and control of a receiver thereof, appointed by the court of chancery of the State of New Jersey, at the suit of one Reuben S. Middleton against said railroad company, and that said receiver retained possession and control of said property until the year 1876, when the possession and control of said property was transferred to the said trustees named in said mortgage. This defendant further says that it is unable to state how much of the stock of said railroad company was ever subscribed for, but its information is that but a small amount thereof was ever subscribed, and that on account of what was subscribed for no money of any material amount or consequence was ever paid, and that all the operations of said company heretofore had have been carried on on credit at exhausting and ruinous rates of interest.

20. In answer to the 20th paragraph of said bill of complaint this defendant says that so much of said railroad as described in this paragraph has been so far built as to make it possible to run an engine with two or three cars upon it. But the construction is crude and temporary, and barely usable.

The earnings of said road are merely nominal, and not sufficient to defray the working expenses of the very few trains which are run upon it, and without a very large outlay of money to complete the construction of that part of said road it will soon be wholly and totally unfit for use, and of no value; and this defendant denies and says it is not true that said railroad has added anything to the real or taxable value of the property in said township, and that the said township is, and the peo-

ple thereof are, in a much worse condition, financially, than they would have been if nothing had ever been done in said township in and about the construction of said road.

56 21. In answer to the 21st paragraph of said bill, this defendant says that it has been informed, and he believes, that some work of the kind mentioned in the paragraph was engaged in, but it was wholly abandoned in or prior to the year 1873, since which nothing has been done in or about the same, and what was done is not now and never has been of any practical value.

21 *a*. This defendant admits the facts stated in this paragraph of said bill.

22. This defendant, in answer to this paragraph, saith that its information and belief are that said Packer and his associates never did own a majority of the stock of said railroad company. This defendant says there was a report and expectation in said Township of Bernards that said Packer would provide for the payment of principal and interest of the said so-called bonds of the said township, and would take the stock subscribed for by said commissioners, and thereby relieve this defendant from all seeming connection with said railroad enterprise, but said Packer did not do so, and when asked to do so denied that he had ever promised or agreed to do so.

23. In answer to this paragraph this defendant saith that it knows nothing of the matter therein stated, except by rumor and report, which has been to the effect that after said Packer refused to take care of the said so-called bonds, an agreement something like the one stated in this paragraph was made between said commissioners and said Beekman, but with said agreement, if any such was made, this defendant had nothing to do, nor is it in any way liable thereon or responsible therefor. The information of this defendant is that said Beekman did not assume or agree to pay any of the said so-called bonds, but simply agreed with said commissioners to indemnify them or the said township against any loss or damage or payment of money by reason of any suit that might be brought and recovery had against said township or said commissioners or any of said so-called bonds.

57 24. As to the facts alleged in this paragraph of said bill this defendant is ignorant, and can make no answer, except to say that it has heard in a general way that said Beekman did take some shares of the capital stock of said railroad company from said commissioners, and did give them in exchange therefor an equal amount, at par, of said so-called bonds, but the amount of either this defendant is not able to say.

25. As to the allegations in the 25th paragraph of said bill this defendant, for want of knowledge, is not able to make answer thereunto, and it leaves the complainant to make such proof thereof as he may be advised is necessary.

26. How many of the said so-called bonds the said complainant has in his possession this defendant is unable to say, and it prays that the complainant shall be required to make lawful proof thereof, and by proof show how many he has, when he obtained them, of whom he obtained them, on what contract, agreement, or understanding he received and holds each of them; and so far as he paid anything for any of them, that he must state how much and in what way he paid therefor. And this defendant charges the fact that, of the bonds mentioned in the 26th paragraph of

said bill, the said complainant is not the owner thereof beyond about so many as in the aggregate will amount to about two thousand dollars, and that all the others of said bonds are the property of divers citizens and residents of New Jersey, who lodged said bonds with the said complainant for the mere purpose of having him bring suit thereon in his own name in this honorable court for the collection thereof, they having, by reason that they are citizens and residents in New Jersey, no right to sue on them, the said pretended bonds, in this honorable court; and that all the expenses of this suit, except a very inconsiderable part thereof, have been, and are to be, borne and defrayed by the said citizens and residents of New Jersey; and this defendant respectfully submits that this bill, so far forth as it relates to any of said so-called bonds, except a very small amount thereof, if any, which belongs to the said complainant, should be dismissed without any inquiry into what rights, if any, appertain to said so-called bonds.

58 27. As to every of said bonds for or on account of which said complainant has any right to prosecute this suit in this honorable court, this defendant submits that the said complainant has no right to any of the relief prayed for in his bill of complaint, because, besides many other reasons, the following, namely: First. Because the said commissioners did not have the consent of a majority of the tax-payers of the said Township of Bernards appearing on the tax-rolls of said township for the year 1867 to borrow money or issue bonds for the purpose of aiding in the construction of said railroad. Second. Because the said commissioners never borrowed any money whatever for the purpose of purchasing any of the stock of said railroad company, and therefore never had any authority to issue any bonds in the name of or on the faith or credit of this defendant. Third. Because the said commissioners never did execute or deliver any bonds whatever. Fourth. Because the said pretended bonds are not the bonds in law of this defendant, and were not and are not executed according to the requirements of the said act of the legislature in such case made and provided. Fifth. Because said so-called bonds were not only made and signed and delivered to said railroad company without authority of law, and contrary to and in violation of law, but this defendant has never received any consideration or benefit therefrom, and no equity attaches to this defendant in respect thereof. Sixth. Because said complainant had lawful, reasonable, and sufficient notice that said bonds were illegal, irregular, and improperly issued, to put him upon inquiry into all the facts and circumstances connected with the partial making and issuance thereof, and it placed him in the same position as if he had had the fullest possible knowledge of every fact and circumstance connected with the proceedings had in and about or in connection with the partial making and issuance of the said so-called bonds. Seventh. That there is no mistake or oversight in or about or connected with the said so-called bonds, except in writing or printing the form of the bonds on paper and signing the name of the said commissioner thereto, and delivering said papers so signed to said railroad company, all of which were mistakes injurious to this de-
59 fendant, and should not be added to or increased by any further additions to said unauthorized and illegal papers.

28. This defendant denies the allegations contained in the 28th paragraph of said bill, and says that so far forth as any of the pretended

bonds were purchased by any of the persons mentioned or referred to in that paragraph, were bought at very large reductions below the amounts named therein, and more of them below seventy cents on the dollar than there were above that price. They were sold and bought, when bought at all, at very low prices, because said bonds were discredited in the market by reason of their known or supposed illegality and irregularity, and were bought upon speculation under circumstances that gave the buyers thereof no equity or equities whatsoever against this defendant.

29. As to what, if any, interest has ever been paid on the said so-called bonds this defendant does not know and cannot tell, but it does know and does tell that it has never, at any time or in any way, paid any interest on any of the said pretended bonds, and if any interest has ever been paid thereon it was done by the said railroad company on its own account to enable it to dispose of the said pretended bonds. This defendant admits the commencement of the action at law mentioned in this paragraph, and it admits that among the pleas which it pleaded to the declaration of the plaintiff in said action was the plea of non est factum.

30. As to any request made by or for said complainant of the two survivors of said commissioners this defendant has no knowledge, and cannot admit or deny the allegations contained in the 30th paragraph of said bill upon that subject, nor does this defendant know why said commissioners did not affix seals to said so-called bonds; but this defendant submits that it is immaterial what those reasons may have been, because said commissioners never had any right to sign nor to seal said so-called bonds, or any of them; and this defendant further says that whatever construction may, in law, be put upon the acts and omissions of the commissioners the fact is, and so it should be regarded in a court of equity, that the said
60 commissioners in and about the signing of the said so-called bonds and the delivery thereof to the said railroad company were not the agents of the defendant, but were the instruments and agents of the said railroad company, and whatever equities may spring from the acts or omissions of the said commissioners do not attach or apply to this defendant, and should apply to said railroad company.

That none of the equities, real or supposed, arising out of the acts or omissions of the said commissioners attach or apply to this defendant, because—

First. It did not ask or procure the said act, and the passage of said act was an unjust imposition upon this defendant, procured by the said railroad company.

Second. Because this defendant did nothing to get said commissioners appointed, and they were not officers chosen, appointed, or adopted by this defendant.

Third. Because the said consents, so far as they were obtained, were obtained by misrepresentations made by and on behalf of the said railroad company, and by misunderstandings produced in the signers of said consents by said railroad company and its agents.

Fourth. Because this defendant never received any money or other valuable consideration in return for said pretended bonds, nor any benefit or advantage therefrom.

Fifth. Because this defendant never authorized or adopted the said so-called bonds.

Sixth. Because this defendant never had the said railroad stock or any benefit therefrom.

Seventh. Because the said railroad stock was never of any value whatever.

Eighth. Because if the said complainant was in any way misled it was not done by this defendant nor by any officers or agents by this defendant chosen, or appointed, or authorized to act in the premises on its behalf.

Ninth. Because as against this defendant the said complainant has no equities and is not entitled to have the said pretended bonds sealed, or to have them treated as if they had been sealed.

And this defendant denies all unlawful acts in said bill of com-
61 plaint alleged or charged against it; without this, that any matter or thing in said bill alleged and herein not expressly and distinctly denied, admitted, or avoided, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is prepared to aver, maintain, and prove as this honorable court and its rules of practice and the laws of the land require; and it prays to be hence dismissed, with its reasonable costs in this behalf sustained to be paid to it.

JACOB VANATTA,
Sol. and of Counsel with defendants, The Inhabitants, &c.

62 United States circuit court district of New Jersey. In equity.

BETWEEN CYRUS CURTISS, COMPL'T,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, & als., def'ts. } On bill, &c.

The demurrer of Catharine Adelaide Beekman, J. Reeve Vanderveer, and William Z. Larned, executors of the last will and testament of Benjamin F. Beekman, deceased, to the bill of complaint of Cyrus Curtiss, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true in manner and form as the same are therein and thereby set forth and alleged, say that they are advised by their counsel that there is no matter or thing in the said bill contained good and sufficient in law to call these defendants in question in this honorable court
63 for the same, but that there is good cause of demurrer thereunto; and therefore these defendants do demur thereunto, and for cause of demurrer these defendants say that the said bill of the complainant (in case the allegations therein contained were true, which these defendants do in no sort admit) contains not any matter of equity on which this court can ground any decree, or give the complainant any relief or assistance as against these defendants; wherefore, and for divers other errors and imperfections in the said bill appearing, these defendants do demur in law thereunto, and humbly demand the judgment of this honorable court whether they shall be compelled to put in any further or other answer to the said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

McCARTER & KEEN,
Solicitors for, and of Counsel with, Def't's Ex'rs.

NEW JERSEY,
Essex County, ss:

J. Reeve Vanderveer, being duly sworn according to law, on his oath saith that is one of the defendants above named, and that the
64 above demurrer is not interposed for the purpose of delay, but in good faith.

J. REEVE VANDERVEER.

Sworn and subscribed before me this 28' day of July, A. D. 1876.
JOHN H. MEEKER,
U. S. Commissioner for the District of New Jersey.

I hereby certify that I have perused the bill of the complainants herein, and that the above demurrer thereto is well founded in point of law.
THOMAS N. McCARTER,
Of Counsel.

Filed July 29, 1876.

65 *The answer of Oliver R. Stelle and John Guerin, two of the defendants, to the bill of complaint of Cyrus Curtis, complainant.—Filed August* 31, 1876.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say:

With regard to the first, second, third, fourth, and fifth paragraphs of said bill, these defendants say they have no knowledge and no information, and can make no answer thereto, and leave the complainants to make such proof thereof as they shall be advised is necessary.

2. These defendants, in answering to the allegations of the sixth paragraph of said bill, say they have no knowledge of or concerning the same, except that in or about the month of July, 1868, the said John H. Anderson, and these defendants, by the honorable Vancleve Dalrymple, one of the justices of the supreme court of the State of New Jersey, were appointed commissioners to carry into effect the purposes and provisions of the said act of the legislature in the said paragraph mentioned.

3. With regard to the seventh paragraph of said bill, these defendants admit the facts therein stated to be substantially true.

4. With regard to the eighth paragraph of said bill, these defendants admit the substance of the allegations therein contained to be true, but for greater certainty these defendants pray leave to refer to the con-
66 sents and affidavits in the said paragraph mentioned; and these defendants further say that at the time of making and filing the affidavits in this paragraph mentioned, from what they had been told, supposed that said consents were sufficient if signed by a majority in value of the owners of real estate situated in said Township of Bernards, and that it was not necessary to the legality and sufficiency of said consents that they should be signed by a majority of all the tax-payers in said township whose

names appeared on the assessment roll of said township in and for the year 1867.

. These defendants, as to the 9th paragraph of said bill, admit that the statements thereof in point of fact are substantially accurate, but for greater certainty they pray leave to refer to the consents now on file in the office of the clerk of the county of Somerset.

6. With regard to the 10th paragraph of said bill, these defendants say that they have been informed and believe that copies of the said consent papers were left with the clerk of the said Township of Bernards for the purpose of being filed in his office, but when they were so left these defendants do not recollect, if they ever knew.

7. With regard to the tenth paragraph of said bill, these defendants admit that the statements therein contained are true substantially, but in order to be accurate as to the consents and affidavits in that paragraph mentioned, these defendants pray leave to refer to the originals thereof on file in the office of the clerk of the county of Somerset.

And these defendants further say that the occasion of filing the consents and affidavits in the said 11th paragraph mentioned was, that some time in the summer of 1869 said Anderson and these defendants were informed that the chancellor of the State of New Jersey had decided and adjudged that the said act of the legislature, approved April 9th, 1868, required that before issuing the bonds of any township, under the provisions of that act, the consent of the tax-payers by said act required should be signed by a majority of all the tax-payers in the township, and that that majority should also represent a majority of the real estate in said township; and
67 thereupon, at the request and under the advice of said John H. Anderson and others, said additional consents were procured and filed.

8. These defendants, in further answering, say as to the twelfth paragraph of said bill they are informed and believe that copies of the consent papers in said 12th paragraph referred to were deposited in the office of the clerk of said Township of Bernards, but these defendants are unable to state when that was done.

9. And in answer to the 13th paragraph these defendants say that before the first of January, 1869, and as nearly as they can now remember, some time in the month of December, 1868, said Anderson, and these defendants, acting as commissioners as aforesaid, did subscribe for twenty-five hundred and forty shares, or thereabouts, of the capital stock of the Passaic Valley and Peapack Railroad Company, which stock, by the terms of subscription thereof, as these defendants recollect and believe, was to be paid for in certain installments, the amount of which and the times of paying which these defendants cannot now remember and have no means of ascertaining, but they say that at the time said stock was subscribed for it was understood between the said commissioners and the officers and agents of said railroad company that the said commissioners were not to pay for said stock in money nor in any other manner than by delivering to said railroad company bonds made by said commissioners in the name of said township, amounting to in the aggregate the amount of said capital stock subscribed for by said commissioners, each to be taken at par. Whether the amount of the par value of said stock is less than ten per cent. of the value of the land property in said township these defendants did not then

know, nor do they now, except, according to the information given to these defendants by the said William A. McMurtry, the said amount did not exceed ten per cent. of the value of the land in said township.

And these defendants, in further answering to this paragraph, say that had it been understood that these defendants, as commissioners as
68 aforesaid, or otherwise, were to pay for the said stock in money, they would not have subscribed therefor, because they had not then borrowed any money for that purpose, nor was there any reason to believe that they could thereafter, on the faith and credit of said township, at a rate of interest not exceeding seven per cent., borrow any considerable sum of money for the purpose of investing it in stock of said railroad company.

10. And these defendants, in further answering, in response to the 14th paragraph of said bill, say that there were prepared for said commissioners, by whom these defendants do not remember, if they ever knew, certain blank bonds purporting to be bonds when filled up of the said Township of Bernards, which bonds were filled up, and at or about the first of January, 1869, signed by the said commissioners, but none of said bonds were ever in any manner sealed by any seal, nor was any device in the nature of or in representation of a seal affixed thereto by any of the said commissioners, and these defendants say that the said bonds were in the form shown by the fifteenth paragraph of said bill of complaint.

These defendants further say that, at or about the time the said bonds were signed by the said commissioners, the said commissioners delivered all of said bonds to Daniel D. Craig, who was the treasurer of the said railroad company, and was also the cashier of the National Iron Bank of Morristown, to be delivered to said railroad company in payment for the stock so as aforesaid subscribed for by the said commissioners from time to time as the installments in which said stock was payable fell due and became payable, and from that time onward said bonds were used and disposed of by said Craig and the officers and agents of the said railroad company as they saw fit.

10*a*. In response to the sixteenth paragraph of said bill these defendants say that they did not and so far as they know and believe said Anderson did not, register the said bonds or cause them to be registered in the office of the clerk of Somerset County; but if said bonds were registered in said last-mentioned office it was procured to be done by some of the officers or agents of the said railroad company.

69 11. In response to the 17th paragraph of said bill, these defendants say that the allegations of said paragraph are untrue, and they all deny the same and every of them, and they say that the truth is that they never at any time or in any way sold or negotiated said bonds, or any ot them, except to deliver them, as herein before stated, to said Craig in exchange for the said stock of the said railroad company, and these defendants never in any way received anything from any person or corporation for said bonds, or any of them, except the said stock of the said railroad company.

12. These defendants, in response to the 18th paragraph of said bill, say that they did, as commissioners as aforesaid, receive from the said railroad company a certificate for twenty-five hundred and forty shares of the capital stock of said railroad company, of the purport and effect stated in said 18th paragraph.

13. In response to the nineteenth paragraph of said bill, these defendants say that ever since they have received the said certificate of stock they have, as commissioners as aforesaid, held said certificates, or others issued in place thereof, and these defendants, as commissioners as aforesaid, on some, but not on all, occasions have voted on said stock.

14. These defendants, in answer to the 20th paragraph of said bill, admit that said railroad company, during the years 1869 and 1870, did cause to be (to some extent) built those portions of their railroad in said bill mentioned; that some portions of said railroad have been to a limited and small extent used, but these defendants do not admit that the inhabitants of the said township of Bernards have derived great benefit from said railroad, nor that the taxable property has been greatly increased thereby, and they deny that it has been increased 20 per cent., and say that they doubt whether it has received any substantial benefit therefrom.

15. And these defendants, in response to the 21st paragraph of said bill, say that they have no particular knowledge or information with re-
70 gard to the facts alleged in this paragraph, and if they are in any way material, leave the complainant to make such proof thereof as may be necessary.

16. And these defendants, in response the 21*a* paragraph of said bill, say that they believe the facts stated in said paragraph to be true.

These defendants, in answer to the 22d paragraph of said bill, say they are ignorant of the matter stated in said paragraph, and can make no answer thereto, except that said Asa Packer, at or about the time in that paragraph mentioned, did have, or manifested, some interest in the said railroad, now known as New Jersey West Line, but so far as these defendants know, and as they believe, said Packer never owned or controlled a majority or any considerable part of the stock of the said New Jersey West Line Railroad Company, and they say that they believe that on one occasion their votes on said railroad stock were cast for the same persons that were favored by said Packer, and they were led to do so because they were told and led to believe that said Packer had agreed to take care of said so-called bonds signed by said commissioners, and pay whatever might be required to be paid thereon, and save the said township from making any payment on account thereof, and would assnme said bonds for said stock, but when offered it for that purpose said Packer denied he had ever agreed so to do, and he refused to and never did so.

18. And these defendants, in response to the 23d paragraph of said bill, say that they are ignorant of and cannot answer to the matters alleged in this paragraph, except to say that on or about the 3d day of June, 1872, at the request of said Beekman, and when said John H. Anderson was for a considerable time absent from the State of New Jersey, these defendants did make an agreement with said Beekman in writing, which was signed by said Beckman, and of which the following is a copy—

"We, Oliver R. Stelle and John Guerin, two of the commissioners appointed for the township of Bernards, in the county of Somerset, State of New Jersey, under an act of the legislature of the State of New Jersey entitled 'An act to authorize certain towns in the counties of
71 Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company,' approved April 9th, 1868, for and in consideration of one dollar to us paid

by Benjamin F. Beekman, of the city of New York, do promise and agree to transfer, assign, and set over unto Benjamin F. Beekman, his executors, administrators, or assigns, all and any part of the capital stock of the Passaic Valley and Peapack Railroad Company which, within six months from this date, may be paid for, to us, or any two of said commissioners, in bonds of the Inhabitants of the Township of Bernards, in the county of Somerset, issued or purporting to have been issued under and pursuant to the act above mentioned, at par; that is, for every one hundred dollars of principal of said bonds legally transferred to said commissioners we will transfer to said Beekman, his executors, administrators, or assigns, two shares of the capital stock of said railroad company standing in the name of said township.

"The number of shares of stock of said company standing in the name of said township is twenty-five hundred and forty, of the par value of fifty dollars each, amounting in all, at par, to one hundred and twenty-seven thousand dollars.

"In consideration of the agreement aforesaid, and for the further consideration that said two commissioners have given to said Beekman a proxy to vote on said stock at the next annual election of said company, said Beekman doth agree with said commissioners, within twenty days of the date hereof, if the election hereinafter mentioned shall result as hereinafter mentioned, to deliver to said commissioners, upon the terms aforesaid, so many of said bonds as at par will amount to seven thousand dollars at least, in exchange for an equal amount at par of said stock. And if at the annual election of said company such board of directors as said Beekman shall nominate or cause to be nominated or shall vote for shall be elected, or a majority of his nominees or of the persons he shall vote for as directors of said company (now called the New Jersey West Line Railroad Company) shall be elected, then and in that event said Beekman doth covenant, promise, and agree with the three commissioners of
72 said township, and with every one of them, and with the said township, to indemnify and save harmless and to keep harmless and fully indemnified as well the said township as the said commissioners, and each and every of them, from the payment of any of the principal and interest of the said township bonds, and of every of them, and from all costs, charges, expenses, counsel fees, and other charges which may be incurred in or by means of any suit or suits, proceedings or proceeding, commenced or hereafter to be commenced, against said township for the recovery of any of the principal of or interest on said bonds, or any of them, or against the said commissioners, or any of them, for anything they have done or omitted to do in respect to said stock or said bonds, or in respect of this agreement.

"And it is further agreed by the said commissioners that while said Beekman shall keep and perform this agreement on his part, the proxies so as aforesaid given to him shall not be revoked and shall be irrevocable.

"(Signed) B. F. BEEKMAN.

"Witness:

"W. J. LARNED.

"Dated June 3d, 1872, New York"—

As by reference to said agreement will more fully and at large appear.

These defendants say that the foregoing is the only agreement of any

kind which they made with said Beekman. These defendants performed said agreement on their part, and said Beekman delivered a portion of said bonds to these defendants, amounting, as these defendants now remember, to four thousand four hundred dollars, in exchange for which these defendants transferred to said Beekman eighty-eight shares of said stock, or thereabouts, which is the whole extent to which said agreement has been performed on the part of said Beekman.

19. As to the 24th paragraph of said bill, these defendants say that they have answered this paragraph in their answer to the preceding paragraph.

As to the 25th paragraph of said bill, these defendants say that, according to their information and belief, the facts stated in this paragraph are substantially true, but these defendants are not particularly informed in respect thereof.

73 As to the 26th paragraph of said bill, these defendants say that they are entirely ignorant of the matters stated in this paragraph, and have no information in respect thereof except the allegations of said bill, and they pray that the complainants may make such proof of those allegations as the law and practice of this honorable court require.

22. As to the 27th and 28th paragraph of said bill, these defendants have no knowledge as to the facts therein stated, and no information beyond the statements of said bill, and they pray that the complainants may make such proof thereof as is by law required.

23. With reference to the 29th paragraph of said bill, these defendants say that they have no knowledge of their own as to what, if any, interest has been paid on any of the bonds so as aforesaid signed by said commissioners, and if any of said interest has been paid, none of it, so far as these defendants know or have information, and as they believe, has been paid by the Inhabitants of the Township of Bernards, in the county of Somerset, and as to the action at law mentioned in said paragraph these defendants have no knowledge or information thereof except the allegations of said bill of complaint.

24. In answer to the 30th paragraph of said bill these defendants admit that the facts therein stated are substantially true, except these defendants, or either of them, did not admit or state that said so-called bonds had been duly issued by them in pursuance of the power and authority in them for that purpose reposed, nor that said township of Bernards had secured or received the full benefit and consideration therefor contemplated by law, but they did say in substance and effect that they on their part had acted in good faith, and that said so-called bonds had not been sealed, so far as these defendants were concerned, because they did not know, nor did it occur to them, nor did any one mention to them, that it was necessary to seal them, and that the sealing of said bonds had not been thought of by these defendants, or either of them; and they say that they can give no explanation of the not sealing of said bonds, except that the sealing thereof did not

74 occur to these defendants, or either of them, nor was the attention of these defendants, or either of them, ever called, by any person, to the sealing of said bonds, and these defendants never heard that it was necessary or desirable to affix seals to said bonds, nor that seals had not been affixed thereto, until five or six years after said commissioners had so as aforesaid delivered said bonds to said Craig.

That these defendants did not at any time assume the duty or responsibility of preparing said bonds or directing as to the manner of executing them, but these defendants wholly and entirely depended for those things upon said John H. Anderson and the officers and agents of said railroad company, and these defendants did nothing in or about the preparing or executing of said so-called bonds except what these defendants were requested to do by said Anderson and the officers and agents of said railroad company, these defendants having been willing to oblige them by doing what they requested in the premises; these defendants assuming that they would ask to be done that which was necessary to be done; and when these defendants had done what they were requested to do they supposed there was nothing more for them to do in the premises.

These defendants were not willing to, nor did they, do anything in the premises which they knew or believed to be wrong, but in all they had to do in and about the making, signing, and disposal of said bonds they had no counsel and no adviser except said John H. Anderson (in whom they had great confidence) and the officers and agents of the said railroad company.

One of these defendants, prior to the signing of the said bonds, asked the question whether said commissioners had any right to exchange said bonds for said railroad stock, and was assured by said Anderson and the officers and agents of said railroad company that there was no doubt of the right and power of said commissioners to make such exchange, and upon that advice these defendants acted.

And in conclusion these defendants deny all unlawful combination in the said bill prayed, without this, that any matter in said bill alleged, and not herein before well and sufficiently answered, traversed, or denied,
75 is true, to the knowledge, information, or belief of these defendants.

All which matters and things these defendants are ready to aver, maintain, and prove; and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JACOB VANATTA,
Solicitor, and of Counsel with the Defendants Stelle and Guerin.

76 *Order overruling demurrer.*

United States circuit court for the district of New Jersey. In evuity.

BETWEEN CYRUS CURTISS, COMPL'T,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, Catharine A. Beekman, J. Reeve Vandeveer, William Z. Larned, executors, &c., of Benjamine F. Beekman, deceased, & others, def'ts. } On bill fro relief.

The demurrer heretofore filed in this cause by William Z. Larned, Catharine A. Beekman, and J. Reeve Vandeve'r, executors of Benjamine F. Beekman, defendants herein, having been argued by Thomas N. McCarter, of counsel with the said defendants, and Henry C. Pitney, of counsel with said complainant; an' the court having taken time to considered thereof, and being now of the opinion that the said demurrer is not well takan, and the

complainant is entitled to the relief prayed for in his said bill of complaint:

77 It is, on this seventh day of May, eighteen hundred and seventy-seven, by the honorable John T. Nixon, judge of said circuit court for the district of New Jersey, ordered, decrees, and adjudged that the said demurrer be, and the same is hereby, overruled, with costs, to be paid by said executors to said complainant, and that the said executors have leave to file their answer to the complainant's bill within forty day' from ser'ice of the copy of this order upon their solicitor, and in default thereof that the said bill of complaint be taken as confessed against them.

JNO. T. NIXON, *J.*

Filed May 7, 1877.

78 Circuit court, of the United States, district of New Jersey.

BETWEEN CYRUS CURTISS, COMPLAINANT, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, and the executors of Benjamin F. Beekman, deceased, et als., defendants.	In equity.

The answer of Catharine Adalaide Beekman, executrix, and J. Reeve Vanderveer and William Z. Larned, executors of Benjamin F. Beekman, deceased, to the bill of complaint of Cyrus Curtiss, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors, uncertainties, and defects in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as they are advised it is material for them to make answer unto, they answer and say that they do not know whether the complainant, Cyrus Curtiss is or is not a citizen of the State of New York.

And they, further answering, admit the allegations contained in the first and second paragraphs of said bill of complaint, but pray leave to refer themselves for greater certainty to the said act of the legislature entitled "An act to charter the Passaic Valley and Peapack Railroad Company."

79 They also admit the allegations contained in the third paragraph of said bill, but in like manner pray leave to refer to the law therein referred to for greater certainty as to its terms and provisions. They also answer and say that they are unable to state whether the allegations contained in the fourth and fifth paragraphs of the said bill of complaint are true or not. They have no knowledge on the subject except that derived from the said bill of complaint, and they leave the complainant to make such proot thereof as may be in his power.

And they further say that they have no knowledge of the *the* truth of the allegation contained in the sixth paragraph of said bill, except as they are informed thereof by the said bill itself; that they are strangers to all such proceedings, and never had any knowledge concerning them, and leave the complainant to make such proof thereof as may be in his power; but they further say that they are advised, and they

respectively submit to this court, that by the constitution of the State of New Jersey the said Vancleve Dalrimple, as judge of the circuit court, had no lawful power or authority to appoint John H. Anderson, Oliver R. Stelle, and John Geurin to be commissioners of the said township of Bernards to carry into effect the provisions of said act, and that such appointment, if any was made, as alleged in said sixth paragraph, was entirely null and void, and could not and did not confer any power on the persons so said to have been appointed commissioners under said act.

And these defendants, further answering, say that they have no knowledge, except from the said bill, of the truth of the allegations contained in the seventh, eighth, ninth, tenth, eleventh, and twelfth paragraphs of the said bill of complaint; these defendants are strangers to all such matters, and leave the complainant to make such proof thereof as may be in his power.

And these defendants also say that they are unable to answer as to the truth of the thirteenth and fourteenth, paragraphs in said bill; that they have no knowledge or opinion on the subject except that derived from the said bill of complaint, and they leave the complainant to make such proof thereof as may be in his power.

80 And these defendants, further answering, say that they do not know and cannot answer whether the form of said allege' bond, as set forth in the fifteenth paragraph of said bill of complaint and of the coupon thereto annexed, are or are not correctly set forth in said bill, but they pray leave to refer themselves to said bonds alleged to have been issued by said commissioners on behalf of said township of Bernards for greater certainty as to their terms and conditions, nor have these defendants any knowledge of the truth of the allegations contained in the sixteenth paragraph of said bill.

And these defendants, further answering, deny, on information and belief, the allegations in the seventeenth paragraph of said bill, that the said commissioners took measures to negotiate and dispose of said bonds so alleged to have been prepared and signed by them, and to have been registered in the clerk's office, or that they did negotiate and dispose of the same from time to time, as these defendants have been informed and charge the truth to be, that all the bonds which were issued or attempted to be issued by the said commissioners in the name and on behalf of said township of Bernards were by said commissioners delivered over to the said The Passaic Valley and Peapack Railroad Company, then called the New Jersey West Line Railroad Company, in exchange for stock of said company; and they deny, on like information and belief, that any of the said alleged bonds were negotiated or disposed of by said commissioners in open market, or that with the proceeds thereof the said commissioners paid to the said The Passiac Valley and Peapack Railroad Company the sum mentioned in said sixteenth paragraph, or any sum of money whatever; nor do these defendants know whether it is true or not, as stated in the eighteenth paragraph in said bill, that at the time therein stated, or any other time, a certificate of twenty-five hundred and forty shares of the capital stock was issued under the corporate seal of the same, and signed by its president and secretary, to the said The Inhabitants of the Township of Bernards, in the county of Somerset, nor what was contained in said certificate, if any was issued, but they leave the complainants to make such

proof of said allegation as may be in his own power, except that they believe it to be true that the said commissioners did, at one time, and may yet, for anything they know to the contrary, hold some of the stock of
81 said company, and have, either in person or by proxy, voted on the same at some of the meetings of the stockholders, but they deny that the said township at any time enjoyed or derived any benefit whatever from the ownership of said stock.

And these defendants, further answering, admit it to be true that the said railroad company did at some time, but the precise time these defendants cannot answer, cause to be built and put in operation a portion of the railroad authorized by said act, leading from a point on the Morris and Essex Railroad near Summit, in the county of Union, through the township of New Providence and the township of Passaic, in the county of Morris, and extending into the said township of Bernards, and that the railroad so constructed had a connection with the track of the Morris and Essex Railroad at the said point near Summit, and that, for some years past, one or more trains have been run daily over said railroad between the village of Bernardsville and Summit aforesaid; but these defendants are informed, and charge the truth to be, that the said railroad was constructed in a very imperfect, hasty, and defective manner; that it never was, to any extent, kept or maintained or repaired by the said railroad company; that very shortly after it was constructed and trains commenced to run upon it the said railroad company became bankrupt and passed into the hands of a receiver, appointed by the court of chancery of the State of New Jersey, by whom the said railroad has been since operated, and that the earnings of said railroad were insufficient to pay the expenses of running and operating the same; that the said railroad thus constructed was of no value whatever to the Inhabitants of the Township of Bernards, and they deny the allegation in said bill that the taxable property of said township was greatly increased thereby.

And they deny the further allegation in said bill that the increase in ratables in said township resulting on the building and operating of said road has been twenty per cent., or after any other rate or any other sum.

And these defendants, in further answering, admit it to be true that said railroad company, while they were constructing said road from
82 Bernardsville to the point near Summit aforesaid, were also proceeding with the work of grading and other labor for a continuation thereof to the city of Newark, and did expend some money thereon; but they deny that the grading of the same for a distance of six miles was already completed when the said work was brought to a stand-still by the financial revolution of the year eighteen hundred and seventy-three, and by the bankruptcy of the said company; and they aver that the money expended in said grading, excavation, and in the trestle works and other structures designed to construct the track was entirely wasted and lost, and of no use or value whatever either to the said company, or to the inhabitants of the said township, or to any other persons.

They admit to be true the allegations contained in paragraph twenty-one in said bill.

And these defendants, further answering, state that they believe it to be true, as stated in the twenty-second paragraph of said bill, that Asa Packer and other persons interested in the Lehigh Valley Railroad Com-

pany did, for some purpose, obtain the control of the majority of the stock of the said The Passaic Valley and Peapack Railroad Company, and did procure themselves to be appointed officers and assume the control thereof; and these defendants believe it to be true that the said commissioners assisted said Packer and his said associates in their project; but they do not know whether they voted according to their wishes, or what agreement they had, if any, with said Packer; but they deny that the said Packer or his associates ever agreed to take from said township its stock in said railroad, or to pay the said bonds so alleged to have been issued, or in any manner to indemnify said township against their payment. They believe it to be true that said Packer and his associates were men of considerable means, but they do not know how far they were responsible for any undertaking, if they entered into *in* such undertaking as is stated in said bill.

And these defendants, further answering, say that they believe it to be true that the testator of these defendants, Benjamin F. Beekman, did become desirous of obtaining a controlling interest for himself and other persons connected with him in the capital stock of the West Line Railroad Company; but these defendants do not know what applica-
83 tions were made, if any, by said Benjamin F. Beekman to said Anderson, Stelle, and Guerin, each, for their influence and votes as stockholders in that behalf; and they admit it to be true that an agreement in writing was entered into between said Benjamin F. Beekman and the said commissioners, of which agreement a copy is as follows, that is to say:

"We, Oliver R. Steele and John Guerin, two of the commissioners appointed for the Township of Bernards, in the county of Somerset, State of New Jersey, under an act of the legislature of the State New Jersey, entitled 'An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union, to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company, approved April 9th, 1868,' for and in consideration of one dollar to us paid by Benjamin F. Beekman, of the city of New York, do promise and agree to assign, transfer, and set over unto said Benjamin F. Beekman, his executors, administrators, or assigns, all and any part of the capital stock of the Passaic Valley and Peapack Railroad Company which, within six months from this date may be paid to us or any two of said commissioners, in bonds of the Inhabitants of the Township of Bernards, in the county of Somerset, issued or purporting to have been issued under and pursuant to the act above mentioned, at part that is, for every one hundred dollars of principal of said bonds legally transferred to said commissioners we will transfer to said Beekman, his executors, administrators, or assigns, two shares of the capital stock of the said railroad company standing in the name of said township. The number of shares of stock of said railroad company standing in the name of said township is twenty-five hundred and forty, of the par value of fifty dollars each, amounting in all at par to one hundred and twenty-seven thousand dollars.

In consideration of the agreement aforesaid, and for the further consideration that said two commissioners have given to said Beekman a proxy to vote upon said stock at the next annual election of said company, said Beekman doth agree with said commissioners, within twenty days of the date

87 it to be true that the complainant commenced an action at law in a plea of debt in this court against the said Township of Bernards, to recover arrears of interest on said bonds, but they do not know whether said township was duly served with the process of this court, or whether it duly appeared to said action, or what proceedings were had in said cause, except that these defendants have been informed that the said Township of Bernards in some manner denied the legality of said bonds, and they are informed and believe it to be true that in said action, in addition to other defences which the inhabitants of said township expected to interpose to said suit, they did rely upon the fact that the said bonds were not sealed by the commissioners.

And these defendants, further answering, say that they have no knowledge of the truth of the allegation contained in the thirtieth paragraph of said bill, and leave the complainant to make such proof thereof as may be in his power; but they are advised and insist that the said Oliver R. Stelle and John Guerin have no power or authority, after having issued said bonds, to make any statements or declarations which would alter the legal condition of said bonds, or that their statements or declarations, if made as stated in said thirtieth paragraph, can have any weight or be of any importance as against these defendants.

And these defendants deny the allegations contained in the thirty-first paragraph of said bill, to the effect that it is inequitable, unjust, and contrary to good conscience for the said township to set up as a defence to the payment of said bonds and the coupons thereto annexed the fact that the same were not actually sealed by the said commissioners; and they deny that the complainant was a bona fide holder or bearer of said bonds for a valuable consideration; and these defendants believe it to be true that the inhabitants of the said township never derived any benefit whatever from the said bonds; that the stock which the said commissioners received in exchange for said bonds is and always has been utterly worthless, and that no valid or legal consideration was ever given for said bonds, and that the said township is not now nor ever was in equity bound to pay the same or any part thereof; and these defendants therefore believe that the said complainant ought not to have a right to have the said bonds re-

88 formed by affixing thereto the seals of the said commissioners or to have the aid of this court in giving to the said bonds any higher or greater validity than belonged to them when they were so disposed of by the said commissioners; that the said commissioners, in dealing with said bonds, grossly betrayed the trusts that were intended to be conferred upon them by the said act; the holders of said bonds, including the complainant, had full knowledge of such abuse of trust, and that neither he nor they have any equity to collect said bonds out of the inhabitants of said township; but whether that be so or not these defendants further insist, and charge the truth to be, that at the time Benjamin F. Beekman, the testator of these defendants, entered into the agreement hereinbefore set forth, it was represented to the said Benjamin F. Beekman that the said bonds were of no validity, because they had been issued without seals, and that every person who took such bonds must know by inspection of them that they were defective in that respect, and not in compliance with the act under which they purported to have been issued, and were therefore void, and the fact that the said bonds were so issued without seals was well

known to the said Benjamin F. Beekman when he made the agreement of indemnity hereinbefore set forth, and that he would not have made such agreement but for that circumstance, and that as against these defendants it would be grossly inequitable and unjust to make any such change in said bonds, the effect of which would be to impose upon these defendants, as executors of said Benjamin F. Beekman, another higher or greater obligation, or a contract of different character from that which he entered into at the time he entered into said agreement.

And these defendants, further answering, insist that the defect in said bonds for want of seals was manifest on their face, so that the complainant and every holder thereof prior to him had notice that they were defective in said particular, and he and they were guilty of such negligence in taking said bonds in that condition as not to entitle them to the relief prayed for in their said bill.

And they respectfully submit to the court that whatever may be right as between the said complainant and the said Inhabitants of the
89 Township of Bernards the liability of these defendants under the contract made by their testator cannot in anywise be increased or enlarged by the action of this court in the premises.

And these defendants deny that any other matter or thing in said bill alleged and not herein expressly and definitely denied, admitted, or avoided is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court and its rules of practice and the laws of the land require; and they pray to be hence dismissed with their reasonable costs in this behalf sustained to be paid to them.

McCARTER & KEEN,
Solicitors of Def'ts, Executors of B. F. Beekman, dec'd.

THOMAS N. McCARTER,
Of Counsel.

A true copy.

S. D. OLIPHANT, *Clerk*,
P'r H.

90 United States circuit court for the district of New Jersey. In equity.

BETWEEN CYRUS CURTISS, COMP'LT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset and others, deft's. } On bill to reform and injunction.

The said complainant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of the Inhabitants of the Township of Bernards, in the county of Somerset, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the

law to be replied unto, confessed, and avoided, traversed or denied, is untrue; all which matters and things this repliant is and will be
91 ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

H. C. PITNEY,
Sol. of Compl't.

Filed July 24, 1877.

92 United States circuit court for the district of New Jersey. In equity.

BETWEEN CYRUS CURTIS, COMPL'T, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, and others, def'ts.	On bill to reform and for injunction.

The said complainant, saving and reserving unto himself all and all manner of advantage of *exception* to the manifold insufficiencies of the said answer of the said Catherine Adelaide Beekman, J. Reeve Van Dervere and William Z. Larned, executors, &c., of Benjamin F. Beekman, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is untrue;
93 all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he has already prayed.

H. C. PITNEY,
Sol. of Compl't.

Filed July 24th, 1877.

94 United States circuit court for the district of New Jersey. In equity.

BETWEEN CYRUS CURTIS, COMPL'T, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, and others, def'ts.	On bill to reform, and for injunction.

The said complainant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of the said Oliver R. Stelle and John Guerin, commissioners, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the

law to be replied unto, confessed and avoided, traversed and denied, is untrue; all which matters and things this repliant is and will be ready
95 to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he has already prayed.

H. C. PITNEY,
Sol. of Compl't.

Filed July 24, 1877.

96 Circuit court of the United States for the district of New Jersey.

BETWEEN CYRUS CURTIS, COMPL'T,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, and others, def'ts.

It is hereby agreed that the depositions of the witnesses in this cause who shall be subject to the subpena of the court, or who shall appear voluntarily within the State, shall be taken before George W. Jenkins, attorney at law, of Morristown, N. J., as special examiner herein, and the undersigned do unite in requesting the honorable judge of this court to appoint him such special examiner, and do consent thereto.

H. C. PITNEY,
Sol. & of Counsel with Complainants.
THOMAS N. McCARTER,
Sol. & Counsel for Beekman, Ex'r.
97 JACOB VANATTA,
Sol. of the Inhabitants &c., &c., Stelle & Guerin, Def'ts.

Enter an order appointing Mr. Jenkins special examiner in the case.

J. T. NIXON, *J.*

Filed Dec. 17, 1877.

98 In the circuit court of the United States, district of New Jersey.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, and Catharine Adelaide Beekman, executrix, and J. Reeve Vandeveer and William Z. Larned, executors of Benjamin F. Beekman, deceased, defendants.
} In equity.

Deposition of witnesses taken in the above cause *taken* before the undersigned, John Whitehead, a United States commissioner, on behalf of the defendants, executors of Benjamin F. Beekman, deceased, in the presence of Henry C. Pitney, esq., solicitor and of counsel with complainant, and of Thomas N. McCarter, one of the solicitors and counsel for the said defendants, executors of Benjamin F. Beekman, dec'd, in pursuance of notice, the due service of which is admitted by the solicitors of the complainant, on this 24th day of February, 1879, at the
99 office of the undersigned, in the city of Newark.

And it is stipulated by the counsel of the parties that the deposition may be taken before the undersigned, with the same force & effect as though the undersigned had been regularly appointed to take the examination by the court.

J. WHITEHEAD,
U. S. Commissioner.

WILLIAM Z. LARNED, of full age, being duly sworn according to law, doth depose and say:

I live at Summit, N. J.; I am a lawyer, & practice my profession in the city of New York.

(Witness being shown a paper dated New York, June 3, 1872, marked "Exhibit 1," for the defendants, executors of Beekman, he says:)

I saw that paper signed by the signers to it, Oliver R. Steele & John Guerin; I signed it as a subscribing witness at the same time it was signed; it was executed, I think, at No. 247 Broadway, Y. Y.; that is, I think, the office of the Merchants' Life Insurance Company, of which Mr. Beekman was president; the number was 257 Broadway.

Question. At the time of its execution was anything said between the parties to the agreement on the subject of the bonds issued by the
100 township therein referred to being sealed?

(Objected to by counsel of complainants as immaterial, irrelevant, and generally incompetent, res inter alios acte.)

Just prior to its execution there was a conversation between Mr. Beekman and the signers to that agreement with reference to the arrangement which was carried out by the paper itself, & in that conversation the subject of the bonds not being sealed was mentioned.

Question. State if you remember what was said by the parties to the agreement, or either of them on that subject.

(Same objection as to last.)

My recollection is that Mr. Beekman stated as one of the reasons why he was willing to indemnify the townships—this township among the others—against those bonds was that there were not sealed, and that he had taken the opinion, or had heard the opinion, of a prominent lawyer of N. J., that that omission rendered the bonds void. I think that he stated that he did not consider that he was incurring any great liability in indemnifying the township on that account. Then two commissioners
101 were present, and Mr. Jonathan Bonnell was present, and Mr. John Littell, from New Providence Township. My impression *in* that Judge Anderson was there; and my impression is that another commissioner from Bedminster was there—Mr. Ferguson—Mr. William Furguson was there in and about the rooms. I am not entirely positive as to all the commissioners I have mentioned being present; there were some, however, from all these three townships, I think.

(Witness being shown another paper dated June 3, 1872, marked "Exhibit 2," for defendant, executor of Beekman, he says:)

That paper is filled up in my handwriting; all except the signatures & the subscribing witness' name is in my writing. That paper I think was delivered to Mr. Beekman at the time of the executing Exhibit 1, on behalf of executors of Beekman.

And, being cross-examined, the witness says:

If Judge Anderson was the commissioner for that township, I am probably mistaken in saying that he was there at the meeting of the stockholders of the railroad company which took place next after the execution of Exhibit 1. Mr. Beekman's board of directors nominated by him were
102 elected, & he obtained control of the railroad & he also made use of this proxy as I understood it.

And being re-examined in chief:

I think I was one of Mr. Beekman's directors, elected at the meeting just referred to; some of his directors remained in office for more than a year, but there was a change; the direction was changed at the annual meeting in 1873. (This last answer objected to as immaterial & irrelevant.) I was present at the election in June, 1873, & so far as I could judge by the acts of the parties and learn from their statements at the time, & to the best of my recollection, Stelle & Guerin voted themselves upon the stock represented by them, & did not vote for Mr. Beekman's nominees for directors. This proxy, Exhibit 2, was not used on that occasion; I think not. After that, in 1873, Mr. Beekman was elected president of the board, but Mr. Packer & his friends were in a majority, but they refused to qualify, & Mr. Beekman had virtual control of the road.

W. Z. LARNED.

Sworn & subscribed before me at Newark, N. J., February, 24, 1879.

JNO. WHITEHEAD,
U. S. Commissioner.

103 WILLIAM FERGUSON, a witness produced on the behalf of the complainant, being duly sworn according to law, doth depose & say:

I was present at the executing of this paper marked "Exhibit 2," on the behalf of the executors of Beekman. I saw Messrs. Guerin & Stelle sign their names opposite the seal, & I signed my name at the same time as a subscribing witness. Prior to the signing of this paper I had heard Mr. Beekman speak on the subject of the bonds not being sealed. He told me that the bonds were not sealed & he had been informed that the township could not be held on them for that reason.

(Counsel of complainant objects to the last two answers of the witness upon the same grounds as were made to similar questions & answers put to & made by the last witness.)

WM. FERGUSON.

Sworn & subscribed before me at Newark, N. J., February 24, 1879.

JNO. WHITEHEAD,
U. S. Commissioner.

The defendant's counsel here offered in evidence the two papers
104 referred to in the testimony of the above two witnesses, & I have marked the same "Exhibits 1 & 2," on the behalf of the defendants' execution of Beekman's dec'd.

Newark, N. J., Feb'y 24, 1879.

J. WHITEHEAD,
U. S. Com'r.

I do hereby certify that the foregoing testimony was taken before in the manner hereinbefore mentioned and certified.

Newark, N. J., Feb. 24, 1879.

J. WHITEHEAD,
U. S. Com'r.

Filed M'ch 8, 1879.

105 United States circuit court, district of New Jersey. In equity.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS and the executors of Benjamin F. Beekman, dec'd, defendants.
} On bill, &c., examination.

Examination of witnesses on part of the complainant, taken before me at my office, at Morristown, N. J., pursuant to an order of this court hereunto annexed, on this eleventh day of December, A. D. 1877, in the presence of H. C. Pitney, esq., counsel for complainant, Jacob Vanatta, esq., counsel for the defendants, the Inhabitants of the Townships of Ber-
106 ards, and Messrs. McCarter and Keen, counsel for the defendants, the executors of Benj. F. Beekman, dec'd.

G. W. JENKINS,
Special Examiner.

On this eleventh day of December, 1877, at the request of Jacob Vanatta, esq., and on affidavit of Thomas N. McCarter, esq., the counsel of the above-named defendants, I adjourned this examination to Tuesday next, the 18th of December, to take place at my office at 9½ o'clock in the forenoon.

On this eighteenth day of December, 1877, H. C. Pitney, esq., appeared for the complainant; Jacob Vanatta, esq., for the defendants, the Inhabitants of the Township of Bernards, and Stelle and Guerin; and Mr. Keen, for the executors of Benjamin F. Beekman, dec'd, and in the presence of the counsel, the examination was proceeded with as follows:

Mr. Pitney offers in evidence the bonds mentioned in paragraph 26, page 13, of the printed book, viz:

Bond	No.	6	$1,000	marked	Exhibit	C 1
"	"	11	1,000	"	"	C 2
"	"	12	1,000	"	"	C 3
"	"	13	1,000	"	"	C 4
"	"	14	1,000	"	"	C 5
"	"	17	1,000	"	"	C 6
"	"	18	1,000	"	"	C 7
"	"	19	1,000	"	"	C 8
"	"	21	1,000	"	"	C 9
"	"	22	1,000	"	"	C 10
"	"	23	1,000	"	"	C 11
"	"	24	1,000	"	"	C 12

	"	"	27	1,000	"	"	C 13
	"	"	36	1,000	"	"	C 14
	"	"	37	1,000	"	"	C 15
	"	"	45	1,000	"	"	C 16
	"	"	68	500	"	"	C 17
107	Bond	No.	87	$500	marked	Exhibit	C 18
	"	"	88	500	"	"	C 19
	"	"	89	500	"	"	C 20
	"	"	94	500	"	"	C 21
	"	"	95	500	"	"	C 22
	"	"	96	500	"	"	C 23
	"	"	97	500	"	"	C 24
	"	"	99	500	"	"	C 25
	"	"	100	500	"	"	C 26
	"	"	101	500	"	"	C 27
	"	"	118	500	"	"	C 28
	"	"	150	100	"	"	C 29
	"	"	157	100	"	"	C 30
	"	"	158	100	"	"	C 31
	"	"	159	100	"	"	C 32
	"	"	167	100	"	"	C 33
	"	"	168	100	"	"	C 34
	"	"	174	100	"	"	C 35
	"	"	175	100	"	"	C 36
	"	"	176	100	"	"	C 37
	"	"	180	100	"	"	C 38
	"	"	182	100	"	"	C 39
	"	"	245	100	"	"	C 40
	"	"	247	100	"	"	C 41
	"	"	258	100	"	"	C 42
	"	"	259	100	"	"	C 43
	"	"	359	100	"	"	C 44

MATTHEW MITCHEL, a witness, produced on part of complainant, being duly sworn according to law, on his oath saith:

I am seventy-eight years old; my home is at Morristown, New Jersey; I am residing at present temporarily at Philadelphia. I know Cyrus Curtis, the complainant in this cause; I have been intimately associated with him for forty or fifty years; he resides at New York City, and has resided there since, I think, 1846, in the State of New York. I purchased bonds of the township of Bernards, in the county of Somerset; I
108 purchased them from Vincent B. King, a broker, in Wall street, New York; he is a stock-broker, in money securities. I bought thirty-five hundred in four bonds, and divided with Mr. Curtis, giving him two bonds for two thousand dollars; I bought them; I mean I made the negotiation for them. Mr. Curtis paid for two bonds of a thousand dollars each, and I paid for one of one thousand, and one of five hundred dollars. He gave his check direct to Mr. King for his two bonds, and I gave mine for my two; this was early in February, 1871, between the fourth and twelfth of February. I have refreshed my memory in regard to the date lately by reference to the stub in my check-book. Mr. Cur-

tises, I am pretty sure, was on the fourth of February, and mine on the twelfth. Mr. Curtis is at present very sick—unable to leave his bed. Mr. Curtis' bonds are numbers 17 and 18, and mine 19 and 87—No. 19 for $1,000 and No. 87 for $500. They are the same bonds which were exhibited here just now. At the time I purchased these bonds I did not, nor did Mr. Curtis, as far as I know, notice that they were not sealed or that there was any defect in them; we took it for granted that they were all right. About that time I knew there were bonds of this kind offered in the market. We paid eighty-five cents to the dollar for them. Mr. Curtis' check was $1,702.50, and my check was $1,276.88. I afterwards transferred my bonds to Mr. Curtis for the purposes of this suit.

Cross-examination by Mr. VANATTA:

Question. Where did Vincent King reside at the time you purchased those bonds?

Answer. He resided in Morristown, and was doing business in New York.

Q. How long before that time had he been a resident in Morristown, and has he not continued to reside here ever since?

A. He has been a resident of Morristown for the last sixteen years to my knowledge; beyond that I know nothing about it.

109 Q. Did you ever in any way or at any time repay Mr. Cyrus Curtis for the money or check which he paid to Mr. King for those bonds; and, if so, when and how did you do it?

A. I don't know that I ever have; we bought the bonds, and he paid for his part, and I for mine.

Q. Are you uncertain whether you reimbursed him, or you did not, for what he paid to Mr. King for those bonds?

A. I am not uncertain.

Q. Do you mean to say positively that you did not reimburse him?

A. Yes, sir; he always owned the bonds, and continues to own them to this day.

Q. Did Mr. Curtis at any time pay you any money or other valuable thing for the bonds which you bought of Mr. King (I mean Nos. 19 and 87); and, if so, how much, and when, and what was the payment made in?

A. He never paid me anything; Mr. Curtis and myself have been partners in business for a great many years, until about 1860.

Q. You stated that you transferred your two bonds to Mr. Curtis for the purposes of this suit; please explain what you mean or meant by that expression, "for the purposes of this suit?"

A. I don't know as for any other purpose than to avoid the expense of each individual bringing suit.

Q. Can you tell whether Mr. Curtis now owns or ever did own in his own right, or as his own property, any of the bonds specified on pages 13 and 14 of the printed case, or, which is the same thing, any of the bonds produced here and offered in evidence by Mr. Pitney, except numbers 17 and 18?

A. I only know the fact that they are in his possession.

Q. My question, Mr. Mitchel, related to ownership, not to possession?

A. That is all I can answer to that question as to ownership; that they are in his possession.

Q. Do you mean, Mr. Mitchel, to say deliberately that you are unable to say anything touching Mr. Curtis' ownership of the bonds produced here to-day, beyond the bare fact that they are in his possession?

110 A. Well, I don't see any reason to modify my other answer.

Q. At the time this suit was commenced, shortly before it commenced and since it has been in progress, have you not had conversations with Mr. Curtis about the bonds in dispute in this cause, and learned from him or from his conversations how many of these bonds he claimed to be the owner of as his own property and in his own right; and do you not know that in those conversations he never pretended to be the absolute owner of any of these bonds, except numbers 17 and 18?

A. I don't suppose he did claim to be the absolute owner of the bonds.

Q. Do you not know and are you not thoroughly satisfied that he never did pretend or claim to be the owner in his own right, and for his own uses exclusively, of any of these bonds, except numbers 17 and 18?

A. I don't know that he ever claimed the bonds as his own. I presume if they are collected the original owners of the bonds will receive the money.

Q. Please state the arrangement under and in pursuance of which these bonds were transferred to Mr. Curtis for the purposes of this suit.

A. I suppose the answer would be that they were placed in his hands in trust.

Q. Was the agreement under which these bonds were placed in his hands for the purposes of this suit reduced to writing and signed by Mr. Curtis and the other parties for whose benefit the suit was brought; and, if so, who has it?

A. There was an agreement in writing. I don't know that I can answer who holds it; I believe Mr. Hampton O. Marsh; I am not sure as to that. I signed it, and I think the other owners of the bonds; I think all whose bonds were delivered to Mr. Curtis. I have no duplicate or any other kind of copy of that agreement.

Q. Who, according to your understanding of the agreement, is to defray the expenses and costs of the suit?

A. As near as I can recollect, Mr. Curtis bound himself to pay the costs, and the others to reimburse him.

Q. What commission or other compensation is Mr. Curtis to be allowed?

111 (Objected to by Mr. Pitney as proving the contents of a paper without producing it or accounting for its absence.)

A. Not any, to my knowledge.

Q. Who did the labor of getting these different bondholders to join in the agreement and to sign?

A. Mr. H. B. Stone and myself, and others took pains to see the bondholders and interest them in it. Mr. Stone and myself perhaps did the most of it.

Q. Did the formation of this combination of bondholders originate with you, or was it suggested by some one to you; and, if so, by whom?

A. I think the determination to commence the suit originated with myself or Mr. Curtis, and I consulted with Mr. Pitney as counsel.

Q. Was that before or after the suit was commenced that this consultation took place between you and Mr. Stone?

A. I think it was before. I have had a great many consultations with Mr. Stone; I can't say what particular thing took place at each.

Q. Up to this time have you contributed or paid anything towards the expenses of this suit?

A. Yes, sir.

Q. Has Mr. Curtis paid anything on this same account?

A. I think he has, sir.

Q. How many other persons have contributed, and who were they?

A. The most of the signers, and I don't know but all, have paid their proportion to reimburse Mr. Curtis.

Q. Do you mean that their proportion of the costs and expenses are the same as their proportion of the amount of the bonds in this suit?

A. Yes, sir; I mean that. Their proportions of the expenses are the same as their proportion of the bonds.

Q. Is James J. Cooper one of the parties to this arrangement?

A. There is a Mr. Cooper, an elderly man; I think he is the man.

112 Q. Where did Mr. Cooper live at the commencement of this suit?

A. I don't know where he lived; I know him when I see him, but I have no acquaintance with him.

(Mr. Pitney admits that James J. Cooper is and has been a resident of New Jersey for the past ten years.

The same admission is made by Mr. Pitney as regards James Holmes, Edwin Ford, Henry Ball, Charles H. Mulford, Lewis C. Burroughs, Hampton O. Marsh, Horace B. Stone, and George A. Lawrence.)

Q. Please tell us how it happened that you and Mr. Curtis purchased bonds at the same time and of the same broker?

A. Mr. Curtis and I were very intimate—occupying the same office, and we would frequently, when we were making investments, buy and divide; we did it in a number of instances; we did it on some bonds of this city—of Morristown.

Q. Did Mr. Curtis propose to you or you propose to him, the purchase of the four bonds which you testified of having bought of Mr. King?

A. I think the suggestion came from me; I knew that there were such bonds in the market; I wanted fifteen hundred dollars' worth, and he said he wanted two thousand dollars' worth; he told me to take fifteen hundred and he would take two thousand dollars' worth.

Q. Did he, prior to that purchase have any knowledge or information about these bonds, except what he obtained from his conversations with you?

A. Not that I am aware of; he relied on me and I relied on the honesty of the people of Bernards, that they wouldn't repudiate their obligations.

Q. Who drew your attention to the bonds of Bernards Township?

A. I think it was Mr. King—V. B. King, the broker; whenever I had anything of that kind to do I always consulted him.

113 Q. Are you sure that you had not some information or knowledge of these bonds before any conversation took place about them between you and Vincent B. King?

A. I am confident that I had not; after he suggested them to me I made inquiry about them of a prominent citizen of Bernards.

Q. At the time you purchased these bonds, were you not a director of

the National Iron Bank, and had you not been for several years prior to that time, and have you not been since then?

A. I think I was a director at that time; I have been a director in that bank for a number of years, but I am not now.

Q. At that time who was cashier of the National Iron Bank?

A. Daniel D. Craig.

Q. He had been the cashier some time before and after that?

A. Yes, sir.

Q. He was also treasurer of the Passaic Valley and Peapack Railroad, wasn't he?

A. I know nothing about it.

Q. Before you had any conversation with V. B. King, or he with you, about these bonds, did you not see one or some of those bonds at the National Iron Bank?

A. Not that I am aware of; I can say pretty confidently no; I may add that they were first brought to my knowledge by Mr. V. B. King, after which I consulted Daniel D. Craig.

Q. Before you had any talk with Vincent B. King, were not some of these bonds offered to the National Iron Bank for sale at a discount, or offered as collateral security by persons who were soliciting loans from the bank, and in that way were not the bonds brought to the notice of the directors of the bank—yourself among them?

A. I have no recollection of any such fact; it may have been, but I don't remember it.

Q. Before you talked with Mr. King about the bonds, did not Mr. Daniel D. Craig ask you to purchase some of these bonds?

114 A. He did not.

Q. At the time Mr. King first spoke to you about these bonds, had you ever seen any of the bonds?

A. I had not.

Q. Where did Mr. King first speak to you about buying the bonds?

A. I can't remember that; I was in the habit in such cases of sometimes calling on him at his office, and sometimes at his house in the evenings when he came up.

Q. Before you made the purchase, how many conversations did you have with him, or on how many different occasions?

A. I don't remember that; he first suggested it, and then I made inquiry of Mr. Craig—Daniel D. Craig.

Q. What I would like to learn, Mr. Mitchell, is how long a time elapsed from the time Mr. King first spoke to you about these bonds to the time when you made the purchase, about which you have testified on your principal examination?

A. I can't remember certainly, but I think no more time than would enable me to confer with Mr. Craig and Mr. Curtis.

Q. Probably not exceeding a week in all?

A. Probably not; I can't be precise, but there was no particular delay about it, I had no hesitation after conferring with Mr. Daniel D. Craig.

Q. During that interval which elapsed between Mr. King's first speaking to you and your making the purchase you had a conversation with Mr. Daniel D. Craig, I understand; whereabouts did that conversation take place?

A. It was no doubt in the Iron Bank; I wasn't in the habit of meeting him anywhere else.

Q. Please tell us as nearly as you can what you asked Mr. Craig about those bonds, and give us his answer, making the conversation as accurate, both as to the order of the conversation and as to the conversation itself, as you can?

A. The substance of the conversation was this: I asked Mr. Craig what he thought of such an investment as the Bernards Township bonds;
115 his answer was, that he didn't wish to advise any of his friends regarding the investment, but he could see no possible reason why the bonds were not perfectly good and would not be paid.

Q. Did you ask him any other question or questions; and, if so, what was it, or what were they?

A. I don't remember anything further; that was the substance of our conversation; my object was to ascertain his opinion as to the character of the bonds, I knowing him to be a citizen of Somerset County, and familiar with the whole transaction of the issuing of the bonds, or believing him to be.

Q. Did he show you any of the bonds on that occasion?

A. I think not; I don't believe I ever saw a bond until after I bought them.

Q. Did he tell you that he, as the treasurer of the railroad company, had placed these bonds in Mr. King's hands for sale, or did he tell you that the bonds had passed from his hands to Mr. King's hands to be sold?

A. I don't think he did; my sole object in seeing him was to get his opinion as to the reliability of the bonds.

Q. I have the impression that you testified that you didn't know, when you bought those bonds or before, that Mr. Craig was the treasurer of the company; am I correct?

A. I did so testify; I may have heard it spoken of at the time, but it made no impression at the time, and I don't now recollect it.

Q. Did you talk with anybody else besides Mr. Craig and Mr. King about these bonds before you made the purchase?

A. I think not; I have no recollection of doing so.

Q. How long after this conversation with Mr. Craig was it that you bought and paid for the bonds?

A. I think immediately, within a day or two; that conversation decided me.

Q. The date of those two checks you mentioned, what was it?

A. The date of Mr. Curtis' check, I think, was the 4th of February, 1871, and the date of my check was the 12th of February, 1871.

116 Q. Was Mr. Curtis' check for $3,500?

A. Mr. Curtis' check which I gave a statement of was $1,702 and some cents; his check was given as soon as the bonds were purchased, and probably my check was given some days afterwards, when I met Mr. King in Morristown; that is the way I account for the difference in the dates of the two checks.

Q. Did you deliver both of those checks yourself in person to Mr. King; and, if not both of them or either of them, state how the delivery was made?

A. I can't do that; Mr. Curtis' check was made payable to Mr. King's

order according to the entry in his book which I saw yesterday; I can't remember who carried Mr. Curtis' check to Mr. King; I have no doubt that I carried my own, and probably his; I think I carried Curtis', but I don't remember; Mr. Curtis was confined to the office, and I was more at liberty and attended to the transaction.

Q. Is it your recollection and impression that Mr. Curtis' check was delivered to Mr. King at Mr. King's office, at New York?

A. It is my impression.

Q. At the time Mr. Curtis' check was delivered to Mr. King did Mr. King deliver the four bonds to you?

A. I don't remember, but the probability is that he delivered them at Curtis' office in New York; I was not there every day, and Mr. Curtis no doubt gave his check at that time.

Q. Did you leave these bonds or any of them in Mr. King's office, in New York?

A. I did not; I never saw the bonds until after I bought them.

Q. Where did you first see these four bonds, or any of them?

A. I can't tell you, but I think at the office in New York—the office of the Washington Life Insurance Company, 155 Broadway.

Q. Had they been paid for before you saw them?

A. They had been.

Q. Had you seen any of them before you gave Mr. King your check for your share of the purchase?

117 A. I don't know—I don't remember; the probability is that I found them in New York, and went in and gave my check for them.

Q. In whose care were they in Mr. Curtis' office, when you first saw them there?

A. If I am correct they were in his personal care.

Q. Was it then that he delivered to you your two bonds?

A. Yes, sir; you understand me that I am not certain about this thing; Mr. King may have delivered them to me; this is the course which I think was pursued; I mean they were probably left at Mr. Curtis' office as he was always in and I not.

Q. Going by the best of your memory, when Mr. Curtis handed you your two bonds did you read them, or either of them?

A. I probably did.

Q. Are you clear or uncertain in your memory touching that point?

A. I am not clear in my memory, but I have no doubt that I read the bonds.

Q. Your two bonds refer to an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union, to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868. Now, before you purchased and paid for these two bonds, numbers 19 and 87, did you read that act of the legislature referred to in your bond; and, if so, when and where?

A. I did not.

Q. Before you purchased these two bonds, 19 and 87, did you go or did you send any one to the office of the clerk of the county of Somerset, to see what there was of record there touching the power and authority to issue these bonds?

A. No, sir.

Q. Before you purchased these bonds did you see anywhere any certified copy of the proceedings said to have been had to authorize the issuing of these bonds?

A. No, sir.

118 Q. If I should come to you with a bond and mortgage purporting to be Mr. Pitney's bond, and the mortgage of his real estate, which I said I had power of attorney from him to execute, would you be likely to purchase the bond and mortgage from me without seeing my power of attorney, or do you think any other business man would?

(Objected to by Mr. Pitney as clearly irrelevant and immaterial.)

A. Well, if you were to bring me such a bond and such a mortgage duly executed, and you were to tell me that his title was good and that the bond was duly executed, and that the power of attorney was good, I would take them very quick, if I had the money.

Q. Did you ask or did Mr. King tell you who his principal was, or on whose account he was selling these bonds?

A. He did not; I never knew where they came from; that is, who was the real owners.

Q. The names to these coupons attached to your bonds are not written but printed, are they not?

(Objected to by Mr. Pitney as a matter of inspection.)

A. My attention was never called to them before; they don't appear to have been written; my attention was never called to them before, and I don't know anything about it.

Q. Were any coupons cut off of these bonds, or either of them, when you first received them?

A. Yes, sir; I think but one was cut off each of them; I am not certain about it.

Q. Had there not been four of them cut off at the time you bought them?

A. I don't remember; those had been cut off that had become due, according to my understanding, or, in other words, there had been no repudiation of interest when I bought the bonds, that had come to my knowledge.

Q. There was no overdue coupon annexed to either bond when you became the owner?

119 A. I think not; if there had been I shouldn't have bought them.

Q. There has been no interest paid since you bought the bonds?

A. No, sir.

Q. You say you understood that the preceding coupons had been paid; who gave you that information?

A. I don't know; I presume I got it from the bond itself, from never having heard of any repudiation.

Q. Did you have any information about the payment of the preceding coupons except the fact that you found them cut off and not connected with the bonds when you bought them?

A. I don't know that I had.

Q. Did you have any information that the inhabitants of the township of Bernards had ever paid any interest on any of these bonds, and if you did who gave you that information?

A. My understanding was that interest had been paid, but by whom I didn't know.

Q. Did you make any inquiry as to whether interest had ever been demanded of the township of Bernards, or whether they had ever paid it?

A. Not that I now remember.

Redirect examination by Mr. PITNEY:

Mr. Curtis is the president of the Washington Life Insurance Company of New York; I have been for several years a director of the company; I think that immediately preceding the time I purchased these bonds I was the vice-president of the company, but I think I had resigned just before that time; I had a desk, however, at the office; I did not give Mr. King a positive order to buy these bonds until after I had talked with Mr. Craig; it was after this conversation with Mr. Craig that Mr. Curtis made his purchase and his payment; Mr. Craig was the cashier of the National Iron Bank of Morristown—is at this time, and has been for many years; his legal residence at that time was at Baskingridge, in Bernards
120 Township; I have always understood that he was a large real estate owner in that township of Bernards; I had no reason to suppose that Mr. Craig was interested to give me any false information; there was nothing at all in the transaction to excite my suspicion; I don't remember whether or not the price of the bonds was any lower than such bonds were selling at that time; I never bought any other township bonds; I have bought the bonds of the city of Morristown, and the city of Hudson, New York, and Bergen County bonds, all of which were paid except Bernards.

MATTHEW MITCHELL.

Sworn and subscribed before me, at Morristown, N. J., this eighteenth day of December, A. D. 1877.

GEORGE W. JENKINS,
Special Examiner.

JOHN L. WELLING, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I will be sixty-two years old next month. I reside at Warwick, Orange County, New York State. I have resided there always; was born and brought up there. I have resided there continuously since 1845. I have a farm and am also president of the First National Bank of Warwick, and have been since its organization in the spring of 1864. My eyesight at present is very poor; I haven't been able to see so as to read for three years; I had an operation performed three years ago and it was unsuccessful. I purchased bonds of the township of Bernards, in Somerset County. I think it was in the summer of 1870. I purchased them from John Buckley, jr.; he isn't junior at present; his business is that of broker, No. 33 Pine street, New York; broker in investment securities, stocks, and bonds. I bought in all between five and six thousand, par value, at different times. I bought some of these for other persons besides myself. I bought for myself in value thirteen hundred; one of one thousand
121 and three of one hundred dollars each. I think I bought some once of Parker & Lawrence. The three one hundred dollar bonds I bought of Parker & Lawrence, dealers in bonds, in Wall street, near Broadway. I can't now tell what were the numbers of the bonds which I

bought for myself. The four bonds, the one of a thousand and the three of one hundred each, which I bought for myself, I left with Mr. Curtis, the president of the Washington Life Insurance Company. Of the other bonds bought by me the one thousand I bought for Gardner K. Nanney. He lived in Warwick, Orange County, New York, at that time. I delivered Mr. Nanney's bond to Mr. Curtis with the others; that was a single one thousand dollar bond. I delivered it at the same time as I delivered my own. I bought a five hundred dollar bond for Maria Nonney, of the same town, Orange County, New York. She lived and died there. William J. Sly acted as her administrator. This bond I also delivered to Mr. Curtis with the others. I also delivered to Mr. Curtis two belonging to Mr. Silas C. Young, also of Warwick, Orange County, New York. These I did not buy for Mr. Young. I believe he bought them himself. Neither Mr. Nanney, or Maria Nanney, or Mr. Sly, or Mr. Young ever lived in New Jersey that I know of. They are old residents of Warwick, Orange County. I paid for these bonds. I paid different prices. The first I bought was eighty-one and a half cents on the dollar; afterwards eighty-two to eighty-five. I think I bought my one thousand dollar bond for eight hundred and twenty or twenty-five dollars, I don't recollect which. The three one hundred dollar bonds cost me at that rate eighty-two and a half, I think. It would be about two hundred and forty or fifty dollars. I bought Mr. Nanney's bonds somewhat later. I think I paid eight hundred and fifty dollars for it, and at the same rate, I think, for Miss Nanney's. I bought it at the same time. The first bonds I bought I think I collected a coupon at the American Exchange Bank. These bonds were in the same condition when I gave them to Mr. Curtis as when I got them. I am certain they were the same bonds which I had bought for Mr. and Miss Nanney. I did not notice at the time I purchased
122 them that they were without a seal. These are not all the Bernards Township bonds I bought for different parties. When I gave these to Mr. Curtis I understood that they were to be included in a suit to be brought by him. I was at Mr. Buckley's office yesterday and got a memorandum from his books, he said, of the bonds which I purchased from him. I had no acquaintance with anybody connected with the railroad company for which these bonds were issued before I bought. Mr. Nanney was a farmer; he died in 1874; his widow is his executrix.

Q. What was your object in buying these bonds?

(Objected to by Mr. Vanatta.)

A. For an investment. I bought them for the Nanneys, on their order.

Cross-examination by Mr. VANATTA:

I don't know that I can tell the year when I delivered my four bonds to Mr. Curtis. It must have been in 1873. I got a receipt for them, but I didn't bring it with me. I did not sell my bonds to Mr. Curtis. He neither paid me anything nor agreed to pay me anything for them as a buyer. He was to bring suit and try to collect them. I was to pay my proportion of the expenses of the suit. I suppose I was to have what was received for my bonds, less expenses. I think I paid him something at the time; a check to pay part of the expenses.

Q. Were you to pay or allow Mr. Curtis anything for his trouble or the use of his name—any percentage or commission?

A. No, sir.

Q. Did you leave the bonds of Mr. Nanney, Maria Nanney, and Mr. Young with Mr. Curtis at the same time you left your own?

A. Yes.

Q. Did you leave them and he receive them on the same terms as were made in regard to your own bonds?

A. Yes.

Q. Gardner K. Nanney and Maria Nanney were both living at that time?

123 A. Yes. They were brother and sister.

Q. Which of them left a will?

A. Gardner. His executrix is his widow; don't think I can remember her name. She has not contributed anything since her husband's death towards the expenses of this suit.

Q. Who is the administrator of Maria Nanney?

A. William J. Sly. I couldn't say when she died. She died before Gardner, and he died in eighteen hundred and seventy-four.

Q. Has has administrator, since her death, paid anything towards the expense of this suit?

A. Yes, sir.

Q. Is Youngs living or dead?

A. He is living in the same neighborhood as the Nanneys did—in our town.

Q. Did you deliver your bonds personally, with your own hands, to Mr. Curtis?

A. I did; I had no previous acquaintance with him.

Q. How did you come to take those bonds to Mr. Curtis and leave them with him?

A. I done it after receiving a letter from Mr. Stone, saying——

(Mr. Pitney objects to witness telling what Mr. Stone said.)

Q. You mean Mr. Stone's letter informed you that Mr. Curtis would receive the bonds; or do you mean that Mr. Stone's letter informed you that he (Mr. Stone) would receive the bonds?

A. That Mr. Curtis would receive them.

Q. How did you come to get into communication with Mr. Stone about these bonds?

A. I think it was through Mr. Thomas O. Smith, who lived in this neighborhood, and was doing business with us, that I had inquired of Mr. Smith in regard to these bonds; so I always supposed after receiving a letter from Mr. Stone. I am not positive.

Q. Had Mr. Stone written previous letters to the one mentioned above about these bonds?

124 (Mr. Pitney objects to the contents of letters being given without producing the original, and as immaterial and hearsay.)

A. Yes, sir.

Q. You went into this arrangement with Mr. Curtis at the request and suggestion of Mr. Stone, did you not?

A. Yes, sir; I suppose I did.

Q. You had no personal acquaintance with Mr. Stone, did you?

A. No, sir.

Q. Who first drew your attention to these Bernards Township bonds?

A. Mr. Buckley.

Q. Had not Thomas O. Smith previously said something to you about those bonds?

A. No, sir.

Q. Had not he or his brother Richard Smith offered them as collateral at your bank?

A. No, sir.

Q. How long before you bought any of these bonds did Mr. Buckley speak to you about them?

A. I can't say—not a very long time.

Q. Did you buy some the first time he spoke about them?

A. No, sir; the next time I went to the city after that I did—perhaps one or two weeks.

Q. In the mean time did you make inquiry of anybody about them?

A. No, sir; no one except Mr. Buckley; I asked him if he had inquired anything about them.

Q. When he first spoke to you about them, did he show you any of the bonds?

A. I am not positive whether he did or not; he had a little pamphlet of the law or the act; I don't know that I read it; I looked into it and took it home, and showed it to Mr. Van Saun; he wanted to invest in something.

Q. Can you tell whether when he gave you that pamphlet he showed you any of the bonds?

A. I won't be positive, but I think not.

125 Q. What did you do with that pamphlet containing the law?

A. I gave it to Mr. Van Saun to look at, I remember.

Q. Did you get it back; and, if so, what did you do with it?

A. I don't remember; but I got other pamphlets when I got the bonds, I remember.

Q. Did you read the bonds before you bought them?

A. I don't think I did; I depended on Mr. Buckley.

Q. Did you ask Mr. Buckley to see certified copies of the papers that had been filed in the office of the clerk of Somerset County in reference to the issuing of those bonds?

A. No; I don't think I did.

Q. You never saw any of those copies before you bought the bonds, did you?

A. Only the pamphlets I have spoken of, and a printed slip with the names of C. Parker and another lawyer on.

Q. Have you that paper marked C. Parker and another lawyer on?

A. No, sir; I sent one to Mr. Stone.

Q. When was it you got that paper marked C. Parker?

A. I got it when I got the first bonds.

Q. Were there any overdue coupons on the bonds when you bought them?

A. No, sir.

Q. Had there been any cut off; and, if so, how many?

A. I can't say; there was one on which was coming due.

Q. When did you buy of Parker and Lawrence?

A. I think it was eighteen hundred and seventy-one that I bought the last. The three one hundred dollar bonds that are here I bought of

Parker and Lawrence; it was in the spring of eighteen hundred and seventy-one; the coupons on them were not paid after that time; one coupon on the one thousand dollar bond I remember was paid after I got it. I remember going to the American Exchange Bank for it. I don't know who left the money there to pay it.

Q. When you got the bonds, or some of them, were you not told that the railroad company had arranged or agreed to pay the interest for three years?

126 A. No.

Q. When did you first hear of that?

A. I don't remember that I ever heard of that.

Q. Did you ask Buckley or anybody else when you bought these bonds what the township of Bernards had got for these bonds, whether they had given these bonds for money lent or not?

A. No.

Q. Did you think it strange that if they had borrowed cash to the amount of bonds issued and had received cash in full, that is, that if there had been a full money consideration for those bonds, did you not think it queer that they would be selling for eighty, eighty-two and a half, and eighty-five cents to the dollar?

A. I don't know that I did. I asked Mr. Buckley if he had inquired of people who knew anything about them, and he said he had, and they said they were all right.

Q. Did you understand, or was it your understanding, that these bonds had been given to the Passaic Valley and Peapack Railroad Company in exchange for a like amount of their stock?

A. I understood that from the act, I think. I don't know that anybody told me. I read part of the law, and I gathered it from that.

Q. What I want to know is, whether, when you bought those bonds, you understood that the consideration of the bonds was a like amount of the stock of this railroad company?

A. If it is in the act, and I think it was, then I did understand it; my impression is that it was in the act.

Q. Did you suppose that was one reason why the bonds were selling at so large a discount?

A. I don't know that I thought anything about the discount; we were buying bonds—town bonds—at quite a discount, I know.

Q. Do you think that you bought those bonds without inquiry as to what consideration had been given for them; didn't you inquire whether they were issued for the accommodation of the railroad company without any consideration of any kind paid, or whether the town had re-

127 ceived the amount of money named in those bonds, or whether the consideration of the bonds was the stock of a railroad company on which nothing had been paid and which had not yet been built?

A. I did buy them, I should think, without inquiry as to that.

Redirect examination by Mr. PITNEY:

Q. Did you know anything about how the bonds were put on the market, except what you got from the act of the legislature, from Mr. Buckley, and from Parker and Keasbey's opinion?

A. No, sir.

Q. You stated that you learned or supposed from the act of the legislature that the bonds were given for stock in the road?

A. That is my impression now; it is a long time since I saw it; I have no recollection of any persons telling me that the bonds were traded for railroad stock; the Mr. Van Saun I spoke of lives in Warwick; he was formerly living at Pompton Plains, I believe, in the eastern part of Morris County; I have bought other township bonds and have known of others being in the market; these others were selling lower, considering the fact that they bore a higher rate of interest, than these.

Q. Was there anything in the price of the bonds that excited your suspicion that they were not right?

A. I think not.

Q. Did you have any suspicion at the time you purchased them that there was any defect or anything wrong about them?

A. No, sir.

Recross-examination by Mr. VANATTA:

Q. At the time you bought those bonds did you suppose that the commissioners whose names were signed to the bonds had before issuing those bonds borrowed and received a full dollar in cash for every dollar
128 named in those bonds, or that, when the commissioners parted with the bonds that they had received cash in full for the amount named in those bonds as the consideration of issuing them?

A. I supposed they had received full amount; I supposed they had been regularly issued, and that they had received that; I knew nothing to the contrary.

Q. Do you mean to say that they had received par value in cash for those bonds as consideration for issuing them?

A. Yes, sir; I had nothing to make me think otherwise.

Q. Didn't you know at that time that it was an utter impossibility for anybody to borrow money at par on such bonds, or to sell them for cash at par?

A. I didn't know anything different from what I have answered; I supposed the commissioners had issued them for value received.

(Question repeated.)

A. I didn't know that they had been issued in that way; when we lend money we require more security than the par value of anything, no matter how good they are.

Q. Can you recollect a single instance occurring since the year 1867 where a man having money to loan lent it to a township on township bonds issued in aid of a railroad at par; and, if so, where did that case occur?

A. No, sir; I don't remember a case of that kind.

Q. Can you recall a single instance where township bonds issued in aid of a railroad at only seven per cent. interest sold at par for cash paid down when the bond was delivered?

A. No, sir; I don't recall any to mind.

Q. These bonds of Bernards Township call for seven per cent. interest on their face; they showed on their face also that they were issued to aid in the construction of a railroad; did not those two facts put together satisfy you beyond all doubt that the commissioners, who issued them, had

not received par in actual cash, at or before the time of delivering them?

129 A. I don't think they did.

Q. As a banking man, as a man engaged in the loaning of money, didn't you know that it was not possible for those commissioners to have got par for those bonds in cash; as a dealer in money didn't you know that that was a thing impossible to be done at that time?

A. I can't say that I did.

Q. Would you have paid par in cash for them?

A. I might and I might not; I think I might.

Q. What makes you think so?

A. Under certain conditions, if I had known more about them I might have done it.

Q. Had you known more about them perhaps you wouldn't have bought them at any price; isn't that more likely?

A. Yes, sir, I suppose it is; if I had known as much as I know now.

Q. Did you know Mr. Cortlandt Parker before you bought these bonds?

A. Only by reputation, as a prominent lawyer; I had heard of him.

Q. Did he state that the commissioners who issued these bonds had received par for them in cash?

A. He did not, I think; I have not seen it for three or four years; there was nothing said about commissioners in it as I recollect.

Q. Did he state that the commissioners had no right to issue any bond unless they received par in cash at or before the time they delivered it?

A. No, sir; he did not state that, according to my recollection.

Q. Did you understand that bonding act as authorizing the commissioners to issue town bonds at a discount of fifteen or twenty per cent.?

A. No, sir, I don't think I did; I don't remember about that; I supposed they came on the market legally and honestly; I bought them honestly.

Q. You did not suppose that it was a matter of any consequence when they once got on the market whether they had been issued with or without authority, did you?

130 A. I took it from Mr. Parker's letter that they had been issued legally——

(Question repeated.)

A. I don't know that I did.

J. L. WELLING.

Sworn to and subscribed before me, at Morristown, this eighteenth day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

HENRY BALL, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I reside in Hanover Township, in this county; was born and have always lived there; I am a farmer; I bought some of the bonds of Bernards Township; I bought on two occasions, both for myself and other parties; I bought in the first place ten one thousand dollar bonds; I kept four for myself; the others I bought for some relatives at the time I was not speculating in them.

I think these now shown me, numbers twenty-one, twenty-two, twenty-three, and twenty-four, were the ones I bought for myself; I know mine were low numbers I bought, that is, I bargained for them from Richard Smith; he lived in Hanover Township, and at that time was dealing in these bonds; I paid eight hundred and fifty dollars for each of them; I exchanged Government bonds for them, taking these at eighty-five cents on the dollar; I think this was in eighteen hundred and sixty-nine; it was soon after they came out; I kept them until I turned them over to Mr. Curtis, somewhere toward the latter part of eighteen hundred and seventy-two, or the beginning of eighteen hundred and seventy-three; I took the interest coupons that came due while I had them, and gave to Mr. Craig, the cashier of the bank, and he collected them for me; the
131 bonds are in the same condition now as when I gave them to Mr. Curtis; the commissioners' names were all signed, and also the clerks; I had heard that some bonds only had two commissioners' names on, and so I was particular to see that there were three on all of mine; so I looked at the bonds; I didn't notice whether or not there was any seal on; I didn't alter them any while I had them; I understood when I had passed them to Mr. Curtis that suit was to be brought on them, and I paid my share of the expenses of the suit.

Cross-examination by Mr. VANATTA:

I made no sale of my bonds to Mr. Curtis; I am just as much the owner as I ever was.

Q. Tell us how you delivered these bonds to Mr. Curtis; when and where you did it?

A. It was through other parties; through Mr. Marsh or Mr. Mitchel, I forget which; it was soon after this suit was commenced; sometime in eighteen hundred and seventy-three; I think I first delivered the coupons to Mr. Marsh or to Mr. Mitchel, I forget which, and then I delivered the bonds in the same way, through those parties; I handed them over to Mr. Marsh or Mr. Mitchel, in the back room of the National Iron Bank; I think I saw Mr. Curtis once with Mr. Mitchel; I think he introduced him as his partner.

Q. Did you ever see Mr. Curtis in connection with the delivery to him of your bonds?

A. I can't say positive that it did; but it seems to me that it was talked over when I saw him with Mr. Mitchel in town.

Q. Did you get a receipt from him at the time you delivered them at the Iron Bank?

A. No, sir.

Q. At the time you delivered them at the Iron Bank did you not understand that they were to be delivered to Mr. Pitney, and not to be sent to New York at all?

A. No, sir; I thought they were to go to New York for Mr. Curtis to make a demand for the interest; my impression was that Mr. Curtis was to make a demand at some bank in New York for the interest.

132 Q. Can you say that they were sent to New York to Curtis, or that they have been in New York at all since you left them at the Iron Bank?

A. I can't say positive.

Q. When you left them there you understood that Mr. Pitney was to commence and prosecute this suit, did you not?

A. I understood that Mr. Curtis was to commence the suit and that Mr. Pitney was to assist him, as there was a good deal of property here invested.

Q. Did you understand that Mr. Curtis was a practicing lawyer?

A. Yes, I thought that he was associated with Mr. Mitchel and that they were both lawyers.

Q. You understood that the suit was to be brought and prosecuted in the name of Mr. Curtis as plaintiff, did you not?

A. Well, yes, sir; I believe that that was the understanding.

Q. Did you think that the lawyer who was to be concerned with Mr. Pitney in the prosecution of these bonds would institute the suit in his own name as plaintiff?

A. Yes, sir; that was the way I understood; I supposed he was the lawyer interested in it.

Q. Who gave you that impression?

A. Well, Mr. Hampton Marsh was the first man I think, and I think Mr. Stone.

Q. To whom did you pay the money which you have paid towards the prosecution of this suit?

A. I always gave my check to Mr. Marsh, payable to him.

Q. Why did you deliver your bonds to Mr. Pitney at once when you brought them up here?

A. I was directed by those parties to leave them there, for Mr. Curtis, I suppose.

Q. Of whom did you make the first purchase of Bernards bonds, and when?

A. I think it was in August, 1869; I made the bargain with Richard Smith, and Daniel Craig delivered the bonds to me.

133 Q. How many bonds and what amount did you get at that time?

A. The first purchase, I think, I got ten one thousand dollar bonds.

Q. How many of those bonds have you now?

A. I claim the ownership of these four bonds, of one thousand dollars each.

Q. You only claim four bonds in this lot brought in here to-day?

A. Yes, sir.

Q. How long after you bargained with Richard Smith was it that Daniel D. Craig delivered them to you?

A. It was soon after; I can't say how soon; Mr. Craig said there was some trouble about the commissioners, and that he wanted the bonds I had to be right.

Q. Give us the best idea you can of the time that elapsed between the time you bargained with Smith and got your bonds?

A. Well, Craig was to deliver the government bonds to Smith when he was satisfied that the bonds were properly executed; I had left the government bonds with Craig to give Smith; Craig you might say was my agent. I should think it was within a few weeks, to the best of my knowledge; I'll say not more than three weeks at the outside.

Q. When was it that Craig told you that something was wrong with the

commissioners; was it when you left your Governments with him or after that?

A. Soon after that; I called to see if he had made the exchange.

Q. What did he tell you then was wrong with the commissioners; what was wrong; what was the matter?

A. There was a report that only two had signed and he said it was necessary that all three should sign the bonds to make them legal.

Q. Did he tell you that he was going to get new bonds signed for you?

A. No, sir.

Q. Did you ever see any of those Bernards bonds that were signed by only two commissioners?

134 A. I did not.

By consent of all the counsel, the examination of witnesses was then adjourned to to-morrow morning, to take place at my office at half past nine o'clock.

G. W. JENKINS,
Special Examiner.

On this nineteenth day of December, A. D. 1877, the examination of witnesses was resumed in the presence of H. C. Pitney, esq., and Jacob Vanatta, esq., counsel of the respective parties, at the appointed hour and place.

Cross-examination of Henry Ball resumed:

Q. When you left your Government bonds at the National Iron Bank or before that time, did you see any of the Bernards Township bonds; and, if so, where and who had those you saw?

A. I don't think I ever saw any of them.

Q. Before the Bernards Township bonds were delivered to you in exchange for your Government bonds, did Mr. Craig tell you anything about there having been a mistake made with respect to the number of tax-payers giving their consent, and that he didn't want you to take yours until they had got the signatures of more tax-payers to the consent?

A. No, sir; he never said anything about that; I was satisfied on that point from a conversation which I had with Mr. Brookfield.

Q. Before you received your Bernards bonds from Mr. Craig, didn't he or some one else tell you that the chancellor of the State of New Jersey had decided that the commissioners had no right to sign or issue any of these bonds, unless a majority of all the tax-payers of the township had signed a consent in writing, and as they had not obtained the consent of a majority of the tax-payers in Bernards, you must hold on until they could get the consent of a majority, or information to that purport and effect?

135 A. No, sir; Mr. Craig never said anything on that subject; Mr. Brookfield thought I was going to buy of him, and he told me that he had satisfied himself; that his son-in-law, Mr. Forsyth had been over there, and had examined the whole proceedings from first to last—the records.

Q. When was it Mr. Brookfield told you that?

A. It was but a little while before I concluded the bargain with Smith.

Q. About how long was it before you left your Government bonds with Mr. Craig?

A. It wasn't but a little while before; it wasn't a month; it was in the same month, I think—I think in August.

Q. Now, didn't you then know, or haven't you since learned, that at the very time Squire Brookfield told you that the commissioners of Bernards Township were busy getting more signatures to the consent, and had been for several months so engaged, thereby admitting that they hadn't enough signatures?

A. No, sir; I never had any hint of that at all.

Q. You say that Mr. Craig told you before you got your Bernards bonds that he wanted you to wait, because there was something wrong about the commissioners or with the commissioners, or some such expression; now, please tell us what Mr. Craig told you, that is what was he waiting to have righted, what was to be done before he was going to give you the bonds; tell us what he said, and what you understood was to be done before you were to take the bonds?

(Objected to by Mr. Pitney, because witness has not said that Craig did ask him to wait.)

A. After I left the Government bonds with him I called to see if he had the Bernards bonds, but Smith had not been able to deliver satisfactory bonds to him, and so he would not take them until three commissioners had signed them.

Q. You are right sure that he told you that the objection he had to the bonds was that they were not signed by all three of the commissioners?

A. He said, as I left the business with him, that he wanted the bonds to be right before he passed them to me.

136 (Question repeated.)

A. Well, there was something said about that.

Q. Was that the only objection or only exception he had to the bonds?

A. Yes, sir; that is all he said to me. I never questioned him on the legality of the thing, because I had talked with Judge Dellicker and Brookfield.

Q. Did Richard Smith ever have possession of the bonds which you received from Mr. Craig?

A. I can't say, but I supposed so. I never seen them in his possession.

Q. Why did you suppose that they ever had been in his possession?

A. Smith told me he was building the road and took them in payment of his work.

(Mr. Pitney objects to what Smith told him, as hearsay.)

Q. Who was the treasurer of the railroad company at that time?

A. I think Craig was; it seems to me so; I won't be positive.

Q. Did you know the fact when you took those bonds of Mr. Craig that those bonds had been in his possession ever since the preceding winter, and that when he received them from the commissioners they were precisely in the same condition as they were when he delivered them to you except that some coupons had been cut off?

A. No, sir; I never knew that he had any bonds in his possession.

Q. Did you know or did he tell you that he as treasurer of the railroad company had received from the commissioners in exchange for railroad stock at par the very bonds he gave to you?

A. No, sir; he never said anything to lead me to believe he had any bonds in his possession.

Q. How many payments of interest did you receive on those bonds?

A. I received two or three; I think it was three.

137 Q. How did you receive it?

A. I left the coupons at the bank to have the interest collected.

Q. Do you know who furnished the money to pay the interest?

A. No, sir; I never heard.

Q. Were not you told when you took the bonds, or before that, that the railroad company was going to take care of the interest until the road got in operation, or longer?

A. When I took them I supposed the township was to pay it, but afterwards learned that the railroad was to pay it.

Q. Which was the first default of interest made on the bonds?

A. I think it occurred in July of eighteen hundred and seventy-one; there has been none paid since.

Q. Did you cut off the coupons on which the default first occurred?

A. I think I cut it off and left it there, or else I found I couldn't get the interest. I cut it off any way, and fastened them back on the bonds again, and they have been on the bonds ever since.

Q. When was it you left these at the Iron Bank, to be sent to Mr. Curtis?

A. Well, soon after this suit was commenced.

Q. Why do you think they were left after the suit was commenced?

A. About that I wouldn't say positively; I left them, I know, about that time.

Q. About the time the suit was commenced?

A. About that time; it might have been a little before.

Q. Well, then, there were four or five overdue coupons on your bonds at the time you left them there for the purpose of being sent to Mr. Curtis, were there not?

A. Yes, sir; there must have been.

Q. And only one of them was cut loose, and the others remained as they had been?

A. Yes, sir; they were just as they are now.

Q. Did you ever go to the American Exchange National Bank and demand payment of any of these coupons?

138 A. No, sir.

Q. Who informed you that payment had been demanded and refused?

A. I think Mr. Stone was the man who told me a demand had been made for the interest.

Q. What rate did Richard Smith allow you for your Government bonds that were exchanged for these Bernards bonds?

A. The market rates that they were quoted at then—one hundred and nineteen or one hundred and twenty; somewheres in that neighborhood.

Q. Who got the accrued interest, you or he?

A. Well, we traded in August, and we traded flat; we took the interest from July first, he on the Governments and I on these.

Redirect by Mr. PITNEY:

Before I went to Craig I can't say that I had heard that there were some of these bonds afloat, signed by only two commissioners.

Q. Did you know whether these were Bernards or New Providence Township bonds, which had got afloat with only two commissioners' names on?

A. I heard that some of the township's bonds were not considered as good as others, for some cause or other.

Q. Who is this Judge Dellicker whom you spoke to?

A. He was a judge of the court, and lived in Chester Township, in this county, very near the Somerset line. He told me he had lived in Bernards once, and had been an assessor for a number of years there.

Q. What year was it that you left these bonds at the bank with Mr. Marsh, to be sent to Mr. Curtis?

A. In the beginning of eighteen hundred and seventy-three, I think.

Q. Do you know when the suit was commenced except by talk?

A. No, sir.

Q. Have you now the memorandum showing the number of the bonds which you own?

139 A. No; I forgot to bring it with me. I think I have it in a book.

Recross-examination by Mr. VANATTA:

Q. Did you sign an agreement between Mr. Curtis and other holders of Bernards bonds about the bringing and prosecution of this suit, and the expenses of it?

(Mr. Vanatta asked Mr. Pitney to produce the agreement between the plaintiffs and the other bondholders testified to by Mr. Mitchel yesterday, and for the production of which he gave notice yesterday.

Mr. Pittney says he has the agreement ready to be produced on the foregoing call, but it must be on the usual terms; that if counsel calling for it takes it into his hands and looks at it he must put it in evidence.

Mr. Vanatta states that he will do with regard to that as he deems right and as the law requires, and will make no previous stipulation about it.

Mr. Pitney says he asks no stipulation, but reminds the counsel that the rule of law requires that a party calling for a paper from the opposite party, and accepting it from his hands, is bound to put it in evidence as his evidence; and that rule he insists on in this case, and that he now tenders the agreement to counsel.

Mr. Vanatta says that he doesn't so understand the rule, and that if he cannot have the agreement unconditionally, subject only to such obligations as the law itself imposes on him, he doesn't want it, and won't have it.

Mr. Pitney says that is all he asks, only the obligations which the law puts on the counsel.

Mr. Vanatta states that he does not want the agreement unless it
140 is to be used by him for the time being, according to his own judgment of what his legal rights and duties are.

Mr. Pitney says he don't propose to submit the question either to his own judgment or the judgment of the counsel, but to the judgment of the court, without any understanding at all, except what the law would imply upon the counsel's taking the paper.

Mr. Vanatta says that on the understanding that if he takes the paper it will have the same place and force and effect as evidence in the cause as

the court shall hold it should have had here and now, he will take the paper and use it.

Mr. Pitney says that he tenders Mr. Vanatta the paper on no conditions or understandings except what the law implies from the fact that he notified him to produce it and that he complies with such request. The reason why he called counsel's attention to the rule of law on the subject was that in the notice served upon him last night counsel used the expression "that he will offer the paper in evidence if he is so advised." Mr. Pitney says he will not produce the paper on any such notice, and he produces it on an unconditional demand and on no conditions, except that the demand be unconditional.

Mr. Vanatta here takes the paper from Mr. Pitney's hands.)

Mr. Ball's examination resumed.

Question (by Mr. VANATTA). Look at this paper and say whether it is the one you signed.

A. Yes, sir.

Q. Did you ever sign any other or similar agreement on the same subject?

A. No, sir.

141 Q. Please tell us why you engaged Mr. Curtis, who was a stranger to you, and living out of the State of New Jersey, to bring this suit; why didn't you make this agreement with Mr. Pitney, or Mr. Marsh, or Mr. Stone, or Mr. Mitchel; why did you go and hunt up a stranger out of the State; what is the reason for that?

A. I can't give you any reason.

Q. Did you have no reason for it?

A. The only reason was that the other bondholders were doing it, and I joined with the rest.

Q. Didn't you ask of some of these gentlemen who were signing the agreement some of these questions I have just asked you?

A. I think I did; Mr. Mitchel and Mr. Stone were the first who spoke to me about it.

Q. What reason did they give you for going into another State?

A. Well, I understood that he had considerable of the bonds, and could start it in some of the courts better than he could start it in this State.

Q. What courts were spoken of as being better courts than those in this Sate?

A. I am not much posted on law matters, but I think there was some mention made of United States courts.

Q. Did you ask, or did any of them tell you what advantages there would be in the United States courts over the courts of the State of New Jersey?

A. Well, it was talked about that it was best to throw it into the highest courts at first, for it would eventually get there.

Q. Did you understand that the reason for selecting Mr. Curtis was that he could sue in the United States court, while no other person whose name is signed to this agreement could sue in the United States court?

A. Well, I didn't know whose name might be signed to it before we got through.

(Question repeated.)

A. I don't know as I heard that mentioned.

142 Q. You have twice the amount of bonds which Mr. Curtis has; why wasn't the suit brought in your name?

A. The plans were all arranged before I signed it, as I supposed.

Mr. Vanatta now offers the agreement in evidence.

Mr. Pitney says that the defendant cannot now offer anything in evidence on his examination, but he waives that point.

The paper marked by me Exhibit B 1, on part of defendant, the Inhabitants of the Township of Bernards, etc.

HENRY BALL.

Sworn to and subscribed before me, at Morristown, this nineteenth day of December, A. D. 1877.

GEORGE W. JENKINS,
Special Examiner.

EDWIN FORD, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I am in my seventy-seventh year; I reside about three miles from this place, at Monroe; my business is pretty much agricultural; I have always lived where I do now; I have bought some of the Bernards Township bonds; I bought of Richard Smith several times—probably I was two or three months buying them; of Bernards and New Providence Township bonds, together, I bought about five thousand dollars; the majority of them is Bernards; these I bought for myself; I commenced to buy them the first year they were issued; it was in July, in the wheat harvest, that is what makes me know the date; I am not positive which I bought first, but I think it was Bernards.

(Witness looks at bonds number thirteen and number thirty-seven, and says:)

143 These are mine; this is my handwriting; I put it on when I handed them over to Mr. Marsh; I think I paid eighty-five cents on a dollar for pretty much all of them; I bought these two bonds, thirteen and thirty-seven, of Mr. Smith; I own these bonds yet; I never passed them away, not sold them I mean, by passing them away; these two I delivered to Mr. Marsh, for the purpose of founding this suit on, which is now pending, I suppose; I signed the paper about that time—the agreement which has been shown here—perhaps a little before that time.

Cross-examination by Mr. VANATTA:

Q. When was it, Mr. Ford, that you delivered your bonds to Mr. Marsh for the purposes of this suit?

A. The date I don't remember; I only remember the fact.

Q. Did you get no receipt or memorandum from Mr. Marsh of his having your bonds?

A. It is my impression that I didn't take any receipt; I think he stated that they didn't require it of him.

Q. You think you had signed the agreement for the prosecution of this suit before you delivered the bonds; now state how long before.

A. The precise time I don't recollect; I think soon—within a few days is my impression.

Q. Up to the time of your signing that agreement you had been accustomed to do your own business in your own name, taking in your own

name your securities for money lent by you, title in your own name for property which you paid for, bringing suits in your own names to collect your bonds and mortgages, promissory notes and other securities belonging to you; were you not?

A. Yes, sir; I use my own name generally.

Q. Please explain to us why, in respect to those two bonds, when you concluded to have suit brought on them, did you not sue them in your own name instead of selecting a non-resident and stranger.

A. It was supposed that this would be the most economical way to collect the bonds.

144 Q. That you mean to have one suit for a dozen or more people, or a dozen or more claims belonging to as many different persons for economy?

A. That is what I answered; for economy.

Q. But why was it that you selected as the person in whose name this omnibus suit was to be brought a man who didn't live in the State of New Jersey? It would have been just as cheap to have selected Mr. Marsh, or yourself, or Mr. Ball, or Mr. Stone, to be the plaintiff, wouldn't it?

A. I was acquainted with the parties that I conferred with, and had confidence in them. All the intricacies of the law I didn't understand, but took the advice of those who understood the law better than myself.

Q. Were you advised or did you understand that the use of Mr. Curtis' name as plaintiff would have any legal advantages that couldn't be had if the name of any Jerseyman was used; and, if so, in what respect?

A. Well, my impression is that I was given to understand that Mr. Custis, who is a stranger to me (I never saw him)—that his position was such that he could bring a suit in the United States court.

Q. Then your object in going into that agreement was to sue your bonds in the United States court, wasn't it?

A. That was my object; to collect my bonds in this court.

Q. You knew also, did you not, that if you brought suit in your own name in the United States court for the collection of these two bonds that your suit would be dismissed for want of jurisdiction of the court, did you not?

A. No, sir; I didn't understand it so; I didn't know the fact until you told me now.

Q. Did you not know the fact that one citizen of New Jersey could not maintain a suit in the United States court against another citizen of New Jersey for the recovery of a mere money demand represented by bond or note?

A. Well, I never thought of it; I didn't know it; if the question had been asked me I couldn't have answered it, I was so ignorant of the matter.

145 Q. How many unpaid overdue coupons were annexed to your bonds when you delivered your bonds to Mr. Marsh?

A. I couldn't say certainly; I think three or four, perhaps two years' interest.

Q. How many payments of interest did you receive on those bonds?

A. I think there was three, perhaps four, coupons paid while I had them.

Q. Where and how did you receive that interest?

A. When the coupons became due I cut it off and it was paid; the bank collected it for me.

Q. You have no way of telling and have no knowledge, I suppose, as to who furnished the money wherewith to pay your coupons, have you?

A. I don't know who did furnish the money.

Q. Who delivered to you these two bonds, 13 and 17, at the time you became the owner of them, and at what place was the delivery made?

A. I think all, or nearly all, except one small one—but I am not sure but all—Mr. Smith brought them to my house, and I paid him at my house, for most of them, if not all; the delivery and payment were simultaneous.

Q. Were these two bonds, No. 13 and 37, delivered to you at your dwelling-house by Mr. Richard Smith?

A. I think they were.

Q. Did you pay for them in currency or did you give him your check or checks for them?

A. I paid him for nearly all I purchased of him in Government bonds—seven-thirties, I guess, at that time.

Q. Did you use your own check or checks to pay him for any of them?

A. When payment was made at my house—perhaps I did pay him one or two checks; I think it is likely; I paid for one that way.

Q. Can you say that you used a check or checks of your own making to pay for any part of the consideration which you gave for these bonds, 13 and 17, or either of them; and, if so, give us the amount of the check or checks?

146 A. Definitely, I can't say which; I think I may have given one or two checks; I can't say definitely; I can't answer your question definitely.

Q. Did Mr. Richard Smith tell you how and where he obtained those Bernards bonds; and, if so, what did he say on that subject?

(Objected to by Mr. Pitney as hearsay.)

A. I have impressions, but how I got those impressions I can't say; that Mr. Smith told me when he got it that the money I gave him went to built the railroad; further than that I don't know.

(Question repeated.)

A. I don't know that he did.

Q. You knew at the time, did you not, that he was engaged as a contractor in the construction of that railroad, or some part of it?

A. That was my understanding of it.

Q. Did you not also understand from him that he had received these township bonds in part pay for work he was doing in the construction of the railroad?

A. That was my impression.

Q. Didn't you ask him how it came that the railroad company didn't pay him for his work in cash instead of paying him in town bonds; and if you did ask him that question, or one in substance like it, what did he say?

A. I don't recollect now asking him that question; there was a good deal of talk; it was several years ago, and I don't remember definitely.

Q. Just read the body of bond thirty-seven to yourself, Mr. Ford.

A. Yes, I have.

Q. Now, please tell me whether before you bought the Bernards bonds of Richard Smith you had read the act of the legislature which is mentioned and referred to in the body of that bond.

A. I never had.

147 Q. Before you bought those bonds of Mr. Smith, what, if anything, did you do to ascertain whether the commissioners whose names are on that bond had authority to make and issue bonds binding upon the municipal corporation known as "The Inhabitants of the Township of Bernards, in the county of Somerset?"

A. At the time Mr. Smith applied to me for money, before I promised him anything, I made inquiry about it, so that I was satisfied it was a safe investment.

Q. Please give me a responsive answer to the question.

(Question repeated.)

A. I made inquiry all about the charter and the law, and went so far as to read the charter, at least I heard it, and also the conditions on which the bonds were to be issued.

Q. Where did you find those conditions?

A. Whether I saw it in print—I think I did—or got it by conversation with others.

Q. You said a few minutes ago, very distinctly, that before you purchased these bonds you had not read the act of the legislature mentioned and referred to in the bond; now do you mean to say that your recollection has changed, and that answer was a mistaken answer, and that the fact is that you had read that act before you bought the bonds?

A. What I did and do mean to say is this: I was ignorant when Mr. Smith first called on me about the act, but I hadn't yet and didn't for some time after that, perhaps days, make the purchase; and in the mean time, between the application for the money and my purchase of the bonds, I made inquiry as respecting the validity and safety of the bonds, and I did say and say now that I either did see or else heard from others the conditions of the charter or law.

Q. Did you go to the clerk's office at Somerville or send any one there to inspect the papers on file there respecting or relating to the issuing of these bonds?

A. I did not.

Q. Did you see any copy of those papers, I mean those on file there, before purchasing?

148 A. I did not.

Q. Did you ask any of the commissioners who issued these bonds what they had got for the bonds when they parted with them, or whether they had parted with the bonds at par, for cash, or whether they had traded them in violation of law for railroad stock that had no intrinsic value, and on which not one cent had ever been paid in money?

A. No, sir; I had never seen a commissioner and had never asked a question; I was ignorant of it.

Q. At the time you bought those bonds of Mr. Smith, did you not know that the commissioners whose names are to those bonds had not received par in money for those bonds when they parted with them?

A. I did not know it; I was perfectly ignorant of it.

Q. Did you not know at the time you bought those bonds of Mr. Smith—

I mean was not your own judgment and belief at that time that nobody, no money-lender, would lend actual money on those bonds at par, payable in money at the time of delivering the bonds?

A. Right the opposite with me.

Q. At that time would you have bought those bonds of Mr. Smith, or anybody else, and paid him for a thousand-dollar bond at the time of delivering a thousand dollars in actual money legal currency?

A. I think I would have given them a hundred cents on a dollar.

Q. How came it then that you only paid eighty-five cents on the dollar?

A. That selfishness which we all possess prompted me to do it.

Q. At what price did Mr. Smith offer them to you?

A. At first he offered them at 90, afterwards I bought them, though, at 85.

Q. What rate did he allow you for your Government bonds?

A. I don't recollect definitely, but they were pretty well up; they varied, though, at the time we were exchanging; he allowed me the market price at the time; I think they were up as high as 20, and it does seem
149 to me that there was one that was a little over 20—twenty-one or twenty-two perhaps; there were two or three months' interval between the first transaction and the last.

Q. You said that after Mr. Smith first proposed to you the purchase of Bernards bonds you made inquiry about them; of whom did you make those inquiries?

A. Of Mr. Craig; particularly of him.

Q. Did you decide to take them upon the information that Mr. Craig gave you?

A. Very much so; not entirely, but very much so.

Q. Whom beside Mr. Craig did you consult about them?

A. I couldn't recollect all; I think my friend Stone and I talked about it; I don't know that it was before I made any investment.

Q. Your talk with Mr. Stone was after the payment of interest was stopped, wasn't it?

A. I am inclined to think it is since the interest stopped that I had any acquaintance with Mr. Stone.

Redirect examination by Mr. PITNEY:

I did not notice when I took the bonds that there was no seals on them.

Q. Did you suppose or suspect that there was any defect in the bonds whatever, of any kind?

(Objected to by Mr. Vanatta.)

A. I thought they were perfect.

Q. It was harvest time, you say, when Mr. Smith applied to you?

A. Yes, sir; it was in July, and it was a few days after that that I bought the first bonds; I recollect seeing the circular signed by Parker and Keasbey, an opinion of theirs as to the validity of the bonds; I didn't get it until after I bought the bonds.

Q. You say that you understood or read the conditions on which the bonds were to be issued; what conditions do you refer to, and what was the nature of them?

150 A. That they must get the majority of the voters—the tax-payers of the township—to vote, as I call it, for this act; and that if they got the majority of the tax-payers, they might issue these bonds, not ex-

ceeding the one-tenth of the valuation of the real estate of the year previous.

Q. Did you do anything to ascertain whether that had been done or not?

A. Yes; I was informed that it had been done.

Recross-examination by Mr. VANATTA:

Q. Who gave you the information that you last spoke of?

A. Mr. Craig, the most that I got.

Q. Did Mr. Craig tell you that a majority of the tax-payers of that township had signed a consent for the issuing of these bonds—these railroad aid bonds?

A. Yes, sir; that is my understanding of it—my recollection of it.

Q. Wasn't this what he told you: that he had got the consent in writing of a majority of the owners of the landed property in Bernards Township?

A. I don't recollect that there was any distinction made between a majority of the tax-payers and a majority of the land-owners, as it was represented to me.

Q. Did he not tell you also that while they already had the consent of a majority in value of the owners of the land, that the commissioners were engaged in getting more people to sign the consent, and that they expected to get enough consents to make a majority of all the tax-payers in that township, or words to that effect?

A. I don't think I ever heard that there was any dissension among the people of the township until since the coupons have been repudiated.

(Question repeated.)

A. No, sir; I don't think I ever heard this before I bought the bonds, and not until now this defense is put up.

EDWIN FORD.

151 Sworn to and subscribed before me, at Morristown, this nineteenth day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

Mr. Pitney states that James J. Cooper, a material witness for the complainant, is sick and confined to his house, and it being proposed that the examiner adjourn this examination to his house, it is, in lieu thereof, by the solicitors and counsel of the complainant and defendants respectively agreed:

That Mr. James J. Cooper is a farmer, living within two miles of Morristown; that he owns Bernards Township bonds numbers 6, 14, 88, 101, 167, 168, 174, 175, and 176; that he bought these bonds in the winter of 1869 and 1870 of Richard Smith, and that he paid said Smith for them, in cash or its equivalent, at the rate of eighty-five cents to the dollar of their par value; that he did not notice at the time he purchased said bonds that there were no seals on said bonds, and that he transferred these bonds mentioned above to Mr. Cyrus Curtis, in the same manner as Mr. Edwin Ford, as stated by him, and that said Cooper signed the agreement

marked "Exhibit B 1" in this cause, and that the lands were transferred to Mr. Curtis with the coupons annexed, as they now appear.

December 19th, 1877.

H. C. PITNEY,
For Complainant.
JACOB VANATTA,
Solicitor of Defendants, Inhabitants, &c., and Stelle & Guerin, Commissioners.

JAMES HOLMES, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

152 I am sixty-one years old, and reside at Boonton, in Morris County, and have resided there for twenty-seven years, and was superintendent of the nail factory as long as it was in operation. I bought some of the Bernards bonds. These, numbers eleven and twelve, of one thousand dollars each, I bought in the fall or winter of eighteen hundred and sixty-nine, before January first, eighteen hundred and seventy; I think of Mr. Moses A. Brookfield. His business, as I understood it at the time, was dealing in real estate and coal, and bonds and mortgages. I made inquiries about them before I purchased them. I went to Mr. Craig, the cashier of the bank, first, and to George Forsyth the same day; he is a lawyer practicing here in Morris.

Q. What did you learn, if anything, of the prerequisites having been complied with?

A. I didn't learn anything in particular that hadn't been complied with to make them valid bonds.

Mr. Forsyth told me he had been down to Somerville and had made an investigation, and examined into the matter.

(Mr. Vanatta objects to what Mr. Forsyth said.)

He reported to me that he was satisfied that the bonds were as good as any other township bonds that were issued; I got that impression or I shouldn't have touched them. I didn't notice that they wanted seals on; I didn't know or suspect of any defect in the bonds whatever; I didn't think there was the shadow of a doubt; I took them in as good faith as I ever took any bonds in my life, so much faith that I bought another for my wife, for a thousand dollars, after they had paid the interest once on mine.

I learned at the time that there was legal voting enough done down there to legalize these bonds, that the people were anxious to have this railroad; a large majority of the people had voted for these bonds, for which they had taken their pay in stock.

Cross-examination by Mr. VANATTA:

153 Q. How did you come to go to Mr. Forsyth to ask him about these bonds; who informed you that he knew anything about them?

A. Well, I had bought some Elizabeth City bonds before that of Mr. Brookfield, and Morris and Essex seconds of him, and when I would step into his office, if he had any matters that he wanted to unload—bonds or anything else—he would generally speak about it. I was sent to Forsyth by Mr. Brookfield; he had sent him down to investigate the matter, or he had been down to investigate the matter.

Q. Did Brookfield say that he had sent Forsyth down to investigate the matter?

A. He said either he had sent him down or that he had been down; probably that he had sent him down.

Q. Are you sure that Mr. Forsyth told you on that occasion that the township of Bernards had received stock of the Passaic Valley and Peapack Railroad Company in exchange for their bonds?

A. He or Mr. Craig told me the same day that they had.

Q. Just state what was said by either Craig or Forsyth on that subject, fully as you can.

A. All the information which I obtained on the day on which I purchased these bonds—Bernards bonds—was received from Brookfield, Mr. Craig, and Mr. Forsyth; those were the only three that I remember talking with about it. Mr. Craig thought the bonds were good; Mr. Forsyth said he had no doubt but what they were good, and I rested there and was satisfied to take them.

Q. Please answer the question.

(Question repeated.)

A. The Bernards people had voted by a large majority, I understood, to issue bonds and take stock for them, and those bonds in that township were looked on as better than those in the other two townships which had joined with them to extend the road.

154 Q. Did you learn from Craig or Forsyth on what terms the bonds had been exchanged for the stock; whether even or at a difference, and if a difference, which way was it, in favor of the bonds or in favor of the stock?

A. I didn't understand anything about it; I didn't ask a question about it; I didn't consider it as a matter of my business at all at the time; all I wanted to know was whether they were worth what I paid for them, with an expectation of their being worth a little more.

Q. Do you mean to say that Mr. Forsyth or Mr. Craig told you that a large majority of the tax-payers in Bernards Township had voted in favor of issuing these bonds?

A. Yes, sir; I mean to say so.

Q. Did you ask them or did either tell you how many votes or consents had been given?

A. A majority of the property holders had so voted.

Q. Is that the information they gave you, that the majority was a majority of the property holders?

A. Yes, sir.

Q. Then are we to understand that they did not say that a majority of the tax-payers had given their votes or consents for issuing the bonds?

A. I don't think there was anything said about it at the time particularly; I was satisfied that a majority of the tax-payers and a good many of the common people were anxious to have the road down there from the information I got that day.

Q. Now, Mr. Holmes, please do us the favor to be as accurate as you reasonably can. What I want to know is what kind of majority you understood from the information you got that day to have been given in favor of issuing of the bonds; was it a majority of the real-estate owners of the township or was it a majority of all the tax-payers of the township?

A. A majority of the property holders, as I understood it, had voted to bond the township, for which they had issued these bonds in good faith, as I supposed.

Q. What do you understand the word "property" to mean as you use it there; do you understand it to mean real estate only, or do you understand it to include every kind of property, real, personal, and mixed?

155 A. Every kind of property.

Q. Was the information you got that a majority of the owners of property generally had given their consent?

A. Yes, sir.

Q. Did you learn how many tax-payers there were in the township in the year 1867?

A. No, sir.

Q. Did you ask?

A. No, sir.

Q. Did you learn what number of tax-payers had given their consent?

A. No, sir; not what number.

Q. If they had told you that the whole number of tax-payers was 804 and that the whole number of those who had given consent was 236, would you have thought that there was a large majority in favor of bonding the town?

A. I shouldn't think there would if there were 804 tax-payers.

Q. You knew at the time that you went to Mr. Forsyth that he was Mr. Brookfield's son-in-law, didn't you?

A. Yes, sir.

Q. You didn't pay him anything for his opinion, or tell him you wanted an opinion for which you expected to pay him?

A. No, sir.

Q. You paid for these bonds on the day you bought them, did you not?

A. Yes; I settled for them the day I bought them. I may not have *been* paid for them that day, but if I did not I did ten days after; they were delivered to me the day I bought them.

Q. Did you give any check or note that day on account of them?

A. I think I paid part in money and the balance in check or short note. I looked this morning and could not put my hands on anything; my books had got confused.

Q. Won't your check-book, or the check, or the note enable us to get the date of the transaction?

A. It probably will.

Q. Won't you hunt them up and produce them, so that we can get the date of this transaction?

156 (Objected to by Mr. Pitney, for that is not for the witness to say unless Mr. Vanatta brings him here on his own account.)

A. I have no objections if I can lay my hands on them without too much trouble.

Q. You have parted with the possession of them, have you?

A. No, sir.

Q. In what month did the transaction occur, according to the best of your memory?

A. In the fall of eighteen hundred and sixty-nine; I can't tell you what month; it was before the first of January; I can't tell within a month or two.

Q. You signed the agreement with Mr. Curtis mentioned by Mr. Mitchell and others, didn't you?

A. (Looking at the agreement, witness says:) That is my signature.

Q. Haven't you contributed money on the basis of that agreement?

A. I gave a check to be used when needed.

Q. You knew when you went to see Mr. Craig about these bonds that he was treasurer of the Passaic Valley and Peapack Railroad?

A. I thought he was a director; I knew he was a director or treasurer. I paid Squire Brookfield at the rate of eighty-five dollars on a hundred for these bonds.

Redirect examination by Mr. PITNEY:

Q. How near to the first of January, eighteen hundred and seventy, did you buy these bonds, as near as you can recollect?

A. Somewhere from October to December, I should judge from another transaction I had with another man. I was indebted to one Bartlett, and gave him a check dated March fourth, eighteen hundred and seventy, to buy one of these bonds with. I bought mine before that; that is, these two.

157 Recross-examination by Mr. VANATTA:

Q. How is it you find the check given to Mr. Bartlett and not the one given to Mr. Brookfield?

A. About three years ago I bought a desk to keep all my papers in; while away from home my wife changed all my papers from where I had been in the habit of keeping them, and put them into that new desk; since that time I have been troubled to find several papers of some little importance to me; this I found in the eighteen hundred and seventy-four checks.

Redirect examination by Mr. PITNEY:

A. I delivered my bonds to Mr. Marsh about the time I signed the agreement. I understood that the coupons were to be included in this suit.

JAMES HOLMES.

Sworn to and subscribed before me this nineteenth day of December, A. D. 1877, at Morristown.

G. W. JENKINS,
Special Examiner.

HORACE B. STONE, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I reside in Morristown, and have lived here since eighteen hundred and sixty-two; I am sixty-one years old; I am not engaged in any specific business at present; I have been a merchant most of my life. I bought some of these Bernards bonds; mine are ninety-four, ninety-five, ninety-six, ninety-seven, ninety-nine, and one hundred; they are five hundred dollars each; I purchased them of Mr. Craig, November first, eighteen hundred and sixty-nine, at eighty-five flat; I paid eight hundred and fifty dollars for each thousand dollars; I did not observe at the time that there were no seals on them; I did not know or suspect any defect about the bonds.

158 Q. What information did you have, if any, of the prerequisites having been complied with?

A. My recollection is that I heard that Squire Brookfield had taken some pains either to get a certified copy of the proceedings required by the act to be filed in the office of the clerk of Somerset County, upon which he registered and signed the bonds as county clerk, or that he had sent to see if the requisites had been complied with; I probably heard the fact or saw the certified copy, but I can't say with clearness whether I saw it or not.

Q. How long did you hold these six bonds?

A. Held them until I transferred them to Mr. Curtis. I want to add to my last answer that that was not all the information I had in reference to the character and reputation of the bonds. I recollect consulting one gentleman in particular about them—Alexander Robertson; he lived on South street, in Morristown, but is not living now. I also consulted others, but it is so long that I can't tell in particular whom I consulted. I signed this combination agreement for suit. I did at one time have all the bonds in my possession that have been shown here; I have been here during this examination; I had them in my possession before this suit was commenced, for the purpose of presenting them at the American Exchange National Bank of New York City, to demand payment of the coupons that were due.

Q. When did you do that?

A. I can't swear to the date without a memorandum I had, with my name and that of Henry W. Miller signed to it. It was shortly before the suit at law was brought. The coupons were not paid; they refused to pay them. My impression is that either before or after or both before and after the demand was made I went to the office of Mr. Curtis, whether to get the bonds or to leave them I don't remember; but I do remember this, that I remained at the office while Mr. Curtis caused a schedule of the bonds to be made.

Cross-examination by Mr. VANATA:

159 Q. When were these bonds first, if ever, in the actual possession of Mr. Curtis; I mean the bonds offered in evidence here, excepting numbers seventeen and eighteen?

A. I can't answer definitely as to when they were first in his possession, and I have been trying to recollect whether I got the bonds from him, and then carried them back after making the demand, or whether I carried the bonds from here to New York and left them with him after the demand.

Q. When was it you made that demand?

A. I can only tell generally that it was before the institution of this suit; I think it was shortly before, not a great while.

Q. What I want to get at is this, whether, so far as you know, Mr. Curtis ever had any actual possession of the bonds in question, excepting numbers seventeen and eighteen, prior to the day on which you made that demand.

A. I can't answer any more definitely than I have answered; I am uncertain in my recollection of it.

Q. Do you not remember taking those bonds from the Iron Bank building to New York on the day you made that demand?

A. I do not; I am not clear about it, as I stated before.

Q. Had the agreement between Curtis and the other bondholders, which has been marked "Exhibit B 1," been signed by the parties thereto before you made that demand?

A. My impression is that it had.

Q. Was not the course of the thing this: that as the parties to that agreement signed it they delivered in their bonds to Mr. Marsh, and they were all retained in his custody until they had been all collected together (excepting the two Mr. Curtis owned, and excepting those owned by parties resident in the State of New York), and then take from the Iron Bank to New York to make the demand?

A. I can't answer it definitely; it is probable. I have been endeavoring to recollect, and knowing that Mr. Curtis was an old experi-
160 enced man, it struck me with force, since I have endeavored to recall these circumstances, that he desired to have a schedule of the bonds; the more I think of it the more I think it was a condition precedent of the delivery of the bonds to me; that he wanted to know what I had; yet it may not have been so.

Q. Did you not bring all the bonds from New York up to Morristown on the day you made the demand, or the day afterwards?

A. I can't say positively that I brought any, or but what I brought all. I can answer this: that what I did was done in one day, and it was a very busy day. I went to the bank twice; they refused the first time to go through with me in detail.

Q. Did you bring out from New York to Morristown, soon after that demand, all or some portion of the bonds?

A. My impression is that if I didn't bring them that day I never did at all; it seems they got them.

Q. At the time Exhibit B 1 was signed how many unpaid coupons were attached to the bonds, as nearly as you can tell?

Pending the answer to this question, the examination was adjourned, by consent of the respective counsel, to Thursday next, the twenty-seventh day of December instant, to take place at the same place, at half-past nine o'clock in the forenoon.

G. W. JENKINS,
Special Examiner.

On this twenty-seventh day of December, A. D. 1877, the examination of witnesses in this cause was resumed, pursuant to adjournment, in the presence of Mr. Pitney, counsel for complainant, and Mr. Vanatta, counsel for defendants, the Inhabitants of the Township of Bernards, and Stelle and Guerin, commissioners.

G. W. JENKINS.

Cross-examination of Mr. Stone resumed:

The question pending at the close of the examination, at the time of adjournment, was repeated.

161 Q. At the time Exhibt B 1 was signed how many unpaid coupons were attached to the bonds, as nearly as you can tell?

A. With the exception of two bonds there were six, and those two bonds had seven, and there was one bond of which there was one coupon, number six, January first, eighteen hundred and seventy-two, missing. The

above applies to the time the demand was made; they may not all have signed at that time.

Q. Now tell us, if you can, the date of making that demand.

A. Twentieth day of February, eighteen hunded and seventy-four.

Q. State the number of the two bonds that had seven unpaid coupons attached at the time the demand was made.

A. Numbers one hundred and eighty and one hundred and eighty-two.

Q. And which one had the missing coupon of January, eighteen hundred and seventy-two?

A. Number one hundred and fifty.

Q. Are you able this morning to tell whether you took those bonds to New York from Morristown on the day you made that demand, and whether you brought them to Morristown after the demand was made?

A. I am not. My recollection is no clearer in regard to that than at the last time I was examined.

Q. How do you fix the first of November, eighteen hundred and sixty-nine, as the date of the purchase of your bonds?

A. By a memorandum-book in which I kept a record of all transactions involving the payment and receipts of cash.

Q. Were the bonds delivered to you on that day; and if so, at what place?

A. I have no doubt of it; my recollection is that it was at the old Iron Bank, underneath this office.

Q. Did you then and there read those bonds, or any of them?

A. I couldn't swear positively as to that; the presumption is that I did read them.

162 Q. Is that your present belief?

A. That is my belief.

Q. What, if anything, was done to hinder or prevent you from seeing that the bonds were without any seals or any imitation of seals?

A. Nothing that I am aware of. I have got Government bonds, and Morris and Essex bonds—firsts and seconds—and Morris County bonds I had, and I don't know that any of them are sealed; I couldn't swear to it. I held stocks of the State of New York, and I couldn't swear that they were sealed; bonds of the State of Missouri and California, and I couldn't swear that they were sealed.

Q. Was there any art, trick, or device used by anybody against you to hinder or prevent you from making just as full and minute an examination of those bonds as you wished to; and if so, who so practiced upon you?

(Objected to by Mr. Pitney as immaterial, and as waste of time and space.)

A. There was not. I took it that the bonds were issued in good faith, as the commissioners said they were.

Q. Had you ever read or examined the bonds you had purchased, or any of the series to which they belonged, before the day on which you made the purchase of Mr. Craig?

A. I couldn't swear positively as to that; my impression is that I had not.

Q. Did you understand that the bonds you purchased of Mr. Craig were

his property at the time he sold them to you, or that he was selling them on account of some one else; and if the latter, on whose account?

A. I didn't understand that they were his bonds; I didn't understand on whose account he was selling them.

Q. Did you know or understand that they were not his own property, in his own right and for his own use?

A. I didn't understand either that they were or were not his.

Q. Then you mean to say, do you not, that you did not inquire and did not learn who the real owner was at the time you bought the bonds?

163 A. My recollection is that I didn't inquire who was the owner of the bonds, and my recollection is that I had very few words with Mr. Craig about it.

Q. Who, if anybody, prior to your purchase, solicited you to become the purchaser of Bernards Township bonds?

A. No one.

Q. Before you made that purchase had you read the act of the legislature mentioned in the body of the bonds?

A. I don't think I had, and I don't think I have read it yet.

Q. At the time you purchased those bonds of Mr. Craig, or before that time, did you ask him, or did he tell you without your asking, what authority and what power John H. Anderson, John Guerin, and Oliver R. Stelle had to make and issue bonds which would be binding upon the inhabitants of the township of Bernards, in the county of Somerset?

A. I don't think I asked him or that he told me; that is my recollection. My recollection is, but it is not very clear, that I saw the copies of the conditions precedent that were filed in the office of the county clerk, which authorized him to sign his name to each bond as having been registered; and I saw that his name was attached to each bond that I bought.

Q. Whose name?

A. William Ross, jr.

Q. By the copies of the conditions precedent do you mean copies of the papers said to have been filed in the clerk's office of the county of Somerset?

A. I do.

Q. Can you tell when that copy had been taken from the clerk's office, or what date the certificate bore, whether it was before or after September first, eighteen hundred and sixty-nine?

A. I couldn't even tell that there was a certificate. The time I saw them, if I saw them at all, was within six months prior to the time I purchased the bonds.

Q. You spoke of having made some inquiries of Moses A. Brookfield; were those inquiries directed to the value of the bonds or to the other

164 point, whether the conditions precedent to authorize the issuing of the bonds had been performed?

A. What I heard from Squire Brookfield was perhaps not in answer to my own inquiries. I was in the habit of seeing him daily. I knew that he was dealing in these bonds; knew that he was an experienced and careful man; heard from him, no doubt, that he had taken pains to ascertain their character; I think he told me so, or others in my presence.

(Question repeated.)

A. As I said, I don't remember so much of inquiring of him as having heard him speak both as to the value and the conditions precedent having been complied with.

Q. Did you inquire of Mr. Craig or Mr. Brookfield, or any one else, before you bought the bonds, anything about the consideration that had been given to the commissioners who had signed the bonds in exchange for the bonds; if you did, of whom did you make the inquiry and what answers did you get?

A. I don't think I made such an inquiry of either of those or of any one else.

Q. What information, if any, had you at the time you bought those bonds as to the consideration which had been given to the commissioners for the bonds?

A. If I read the bonds at the time I purchased them, it is altogether probable that the only information I had was what they express on their face, to issue bonds and to take stock in the Passaic Valley and Peapack Railroad.

Q. Do you mean to say that at the time you bought the bonds you supposed and understood that the commissioners had received stock of the Passaic Valley and Peapack Railroad Company in exchange for the bonds?

A. I can't answer definitely now as to what I might have supposed then; perhaps if I should answer the question I might confound what I learned afterwards with what I might have known then.

Q. Can you not tell now what you supposed and believed at the
165 time you bought those bonds as to the consideration which had been given for those bonds to the commissioners who signed them?

A. I supposed and believed then, and I suppose and believe now, that the commissioners acted in good faith, and that they didn't come into the county of Morris with a bond with their signatures attached to it, headed by the township of Bernards in large letters, unless they believed they were not only representing in good faith the township of Bernards, but were acting in good faith towards those who might buy the bonds.

(Question repeated.)

A. I have previously answered that my knowledge as to the acts of the commissioners was indefinite—at the time I made the purchase, I mean. I had no reason to believe, and haven't now, that they didn't act in good faith, any more than if they were to set up that their names were forged.

Q. Please answer the question that was put to you.

(Question repeated.)

A. If I knew or supposed anything at the time, it must have been that the consideration was stock in the road; I don't mean to answer indefinitely that I knew anything; it was eight years ago.

Q. Was your conversation with Alexander Robertson relative to the question as to whether the bonds were legally obligatory and binding upon the inhabitants of the township of Bernards, or as to what he thought of the value of the bonds of Bernards Township?

A. I wouldn't undertake to give my conversation with Mr. Robertson, what he said or what I said, for it is too shadowy. I remember talking with him on that subject and on financial matters, for I considered him a man of sound judgment; but I don't remember the particulars of the conversation.

Q. Did not Mr. Robertson say in effect that he thought it a very unwise and injudicious thing for any of those townships to issue any bonds in aid of a railroad?

166 A. I couldn't remember.

Q. Did he ever buy one of those bonds or deal in them for any purpose?

A. I don't know; he had a high respect for bonds and mortgages.

Q. Did you solicit or request Mr. Welling and the Nanneys and Youngs to contribute to this suit?

A. I had some correspondence with Mr. Welling, but I don't know whether the first word came from me or from him; my remembrance is that I was spoken to by Thomas O. Smith once or oftener before there was any correspondence.

Q. Why did they not sign Exhibit B 1; did they refuse, or were they not asked?

A. I don't think they refused, and I don't know that they were ever asked.

Q. Was not the result of the correspondence between you and him that he and his New York associates (Young and Nanney) agreed to go in with you on the same terms contained in Exhibit B 1?

A. Yes; Mr. Welling had correspondence with others, and an interview with Mr. Curtis in New York, and the result of the correspondence and the interview was that he joined in the suit.

Redirect examination by Mr. PITNEY:

I cannot give with precision the date when the parties signed the agreement marked "Exhibit B 1."

H. B. STONE.

Sworn to and subscribed before me, at Morristown, this twenty-seventh day of December, A. D. 1877.

GEORGE W. JENKINS,
Special Examiner.

SILAS C. YOUNG, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

167 Q. What is your age, in what State and county do you reside, and how long have you resided there?

A. I am forty-five years of age; reside in the county of Orange, in the State of New York, and have always resided there.

Q. Look at bonds numbers two hundred and fifty-eight and two hundred and fifty-nine, exhibits in this cause, and see if you have ever seen them before; if so, where; what have you to do with them?

A. These are my bonds; I saw them in my possession before; I got them of Parker and Lawrence, No. 1 Wall street, New York, in, I think, June, eighteen hundred and seventy. I paid either eighty-five or eighty-two and a half cents on the dollar in cash for them; that is, either one hundred and sixty-five or one hundred and seventy dollars for the two; I forget which. Parker and Lawrence are brokers. I think it was until January, eighteen hundred and seventy-four, that I kept them. I then gave them to Mr. Welling; he said there was going to be a suit, and he wanted me to go in with them; I did not notice when I bought them that there were no seals on them. I didn't open them when I bought them.

Cross-examination by Mr. VANATTA:

Q. At what place were you when you bought those bonds?

A. At number one Wall street.

Q. Did you go there for the purpose of buying Bernards Township bonds; that is, had you made up your mind to buy two Bernards bonds before you went to the broker's office of Parker and Lawrence?

A. Not fully.

Q. How long was it after you bought and received the bonds before you opened and read them, as near as you can tell?

A. Probably two weeks.

Q. Had you ever seen or read any of the Bernards bonds before you made that purchase?

A. No, sir.

168 Q. Had you ever read the act of the legislature of New Jersey mentioned in the bonds before you made the purchase of those bonds.

A. I think I did.

Q. When and where?

A. I obtained it from Parker and Lawrence at the time I went to inquire about these bonds.

Q. Were you at Parker and Lawrence's to see about these bonds before the day on which you made the purchase; and if so, how long before?

A. Yes, sir; about a week before.

Q. How did you come to go there?

A. I saw the advertisement in the New York Tribune.

Q. After you opened and read your bonds did you take them back to Parker and Lawrence and ask them to give you back the money, or send them word that they must pay you back your money, and take back their bonds because they were defective?

A. No, sir.

Q. Why didn't you?

A. I didn't suppose they were defective.

Q. You thought they were good without any seals on, did you?

(Objected to by Mr. Pitney, because it don't appear that the witness thought anything about it.)

A. I didn't know anything about it; I didn't know whether they were sealed or not; I didn't ever look for it.

Q. Did you read them after you had got them home and opened them?

A. I think I did.

Q. Did you see any seals on when you did open them?

A. Not that I know of; I can't say that I did or didn't.

Q. When you opened them and read them did you look to see if anybody had ever signed them; and if so, how many signatures were there to them when you first read them?

A. There were signatures to the bonds; there were at least two; whether there were more than that I can't say; I don't remember.

169 Q. If you saw the signatures, then you must have seen that there were no seals there, didn't you?

A. I didn't think anything about a seal. I suppose they were all right or else I wouldn't have bought them.

Q. Why do you think it was in June, eighteen hundred and seventy, that you bought the bonds?

A. Because I was at Paterson at that time on a visit, and have been in June of every year for a number of years.

Q. How many, if any, payments of interest have you had on those bonds since you bought them?

A. I think I have had two; I know I have had one.

Q. Where did you get that, and how?

A. I think I sent the coupons down by the National Bank at Warwick; I won't be positive, but I think so.

Q. You don't know who furnished the money to pay it?

A. No, sir.

Q. Have you contributed anything towards the expense of this suit; if so, how often and how much?

A. Yes, sir, once; the amount I can't exactly tell; between four and five dollars, I think; I paid it to Mr. Welling.

Q. If your bonds are collected by the suit, what share is Mr. Curtis to have out of your bonds?

A. I don't know, sir, that he is to have any; nothing has ever been said to me about it.

Q. If the suit fails who is to pay the expense, Mr. Curtis or the people who are suing in his name?

A. That I can't tell you; I suppose all will contribute in proportion to the amounts of the bonds they hold.

Redirect examination by Mr. PITNEY:

I saw the advertisement of these bonds every day for a long time in the Tribune.

SILAS C. YOUNG.

Sworn to and subscribed before me, at Morristown, this twenty-seventh day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

170 Mr. Pitney offers in evidence a certified copy of consent papers, filed seventeenth day of December, eighteen hundred and sixty-eight, in the clerk's office of Somerset County (marked by me "Exhibit C 45").

Also certified copy of second set of consent papers, filed September first, eighteen hundred and sixty-nine (marked "Exhibit C 46").

Also certified copy of the appointment of Anderson, Stelle, and Guerin as commissioners (marked "Exhibit C 47").

Also certified copies of the oaths of office of the three commissioners, Anderson, Steele, and Guerin (marked exhibits "C 48," "C 49," and "C 50").

Mr. Vanatta objects to admission of Exhibit C 47, on the ground that the exhibit contains no evidence that the signers of the petition therein contained were freeholders, nor does the judge certify that any proof of that fact was made before him.

MATTHEW H. VANDERVEER, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

Q. How old are you, where do you reside, and what is your business?

A. I am thirty-seven years of age; I reside in Somerville, Somerset County, New Jersey, and am clerk of the county of Somerset, and have been since November, eighteen hundred and seventy-five, and as such have charge of the records of that county. William Ross, jr., was county clerk just before me for ten years; I am acquainted with his handwriting. Witness (looking at Exhibits C one to C 41, inclusive) says: The name of William Ross, jr., signed to each of these bonds, is in his handwriting, to the best of my knowledge and belief; I recognize this as his hand-
171 writing. I was subclerk for Mr. Ross for eight years just prior to the end of his term of office—that is, his last term of office. There was a book kept in the office in which these bonds were registered. I have with me the original of which C 47 is a copy, now with me, and I now produce it; it is one of the files of my office, and I am unwilling to have it out of my possession; I brought it here to-day in obedience to a subpœna duces tecum.

I have also here the originals of which C 45, C 46, C 48, C 49, and C 50 are copies, and now produce them; the seals to these exhibits are the seals of the county of Somerset, as well as the seal to C 47.

The original of C 47 is marked on the back "Filed July 10, 1868, Wm. Ross, jr., clerk;" this endorsement is in my handwriting; it has been since that time in the clerk's office.

The signature "V. Dalrimple, judge of the circuit court of the county of Somerset," I recognize as the handwriting of V. Dalrimple; he was at that time judge of the circuit court of the county of Somerset.

The endorsement on C 45, "Filed December 17th, A. D. 1868, William Ross, jr., clerk," I recognize as being in the handwriting of William Ross, jr.

The endorsement on C 46, "Filed September 1st, 1869, William Ross, jr., clerk," I do not certainly recognize, but think it was made by a clerk he had by the name of Messler.

These original papers which I have brought and produced here have been in the clerk's office of Somerset County since they were severally filed, so far as I know.

Cross-examination by M. VANATTA:

Q. Have you with you the book in which the clerk registered these bonds?

A. I have, and now produce it.

(Book produced and shown to Mr. Vanatta.)

172 Q. Were you present when the bonds registered here in this book were brought into the clerk's office to be registered, and if not as to all but as to part, which part?

A. I was not present, so far as I know, as to all or any of them.

Q. I suppose, therefore, that you cannot tell us who produced them at the clerk's office, and at whose request the several registrations were made?

(Objected to by Mr. Pitney as not a matter of cross-examination, and because he does not wish time of master occupied by this examination now, as he wishes to examine other witnesses as to some of the original papers brought here by this witness.)

A. I cannot.

Q. Can you say that the entries made in this book were written at different times, in different years, or that they were not written straight along as one continuous piece of writing done inside of a week's time?

(Mr. Pitney appeals to counsel not to continue this line of examination under the circumstances.)

A. I cannot say.

Redirect examination by Mr. PITNEY:

Q. Just give us the date of the different registrations from this book of Bernards Township bonds, and the number of bonds.

A. January eighteenth, eighteen hundred and sixty-nine, forty-two bonds; September fourth, eighteen hundred and sixty-nine, fourteen bonds; October twelfth, eighteen hundred and sixty-nine, one hundred and eleven bonds; March twenty-first, eighteen hundred and seventy, one hundred and ninety-seven bonds. The registry appears to be made in the handwriting of William Ross, jr.

MATT. H. VANDERVEER.

173 Mr. Vanderveer, being recalled, says: Exhibit C 47, now shown me, is a true copy of the original paper produced by me on my examination.

MATT. H. VANDERVEER.

Sworn to and subscribed before me, at Morristown, this twenty-seventh day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

DANIEL D. CRAIG, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I am fifty years of age; Baskingridge, Somerset County, New Jersey, is my place of residence, and I am cashier of the National Iron Bank, and have been for, I think, fifteen years. Baskingridge is eight miles from Morristown, where the National Iron Bank is located. I was in the mercantile business nearly two years at Baskingridge, and have resided at Baskingridge, excepting four or five years that I was in New York, all my life.

Q. Please look at the original paper now handed to you by the clerk of Somerset County, of which C 47 is a copy, and see if you know any of the persons whose names are signed to the application to the judge, forming part of this paper.

Witness (after examining the paper shown him) says:

A. I know a good many of them; I know Robert Blair, a John Mullen, James V. Blazure, Thomas K. Heath, Walter K. Sturgis, George Bender, F. Thompson (that is Frederick Thompson), Charles P. Crue, James Allen, I. W. Keeler, James H. Thompson, Jacob K. Lewis, John Adamson, Robert C. Bishop, Charles Barker, Ira B. Pruden, James I. Hill, A. F. Voorhees, S. R. De Coster, Samuel Elsen; I did know a young man by the name of Stevens in a store there, and I knew a Fisher, I think I. M. Fisher, who was a farmer.

174 Q. With the handwriting of how many of the persons just named

were you or are you acquainted, and do you recognize the handwriting of any of those persons on the paper about which you have been examined; and, if so, which ones?

A. Robert Blair, James V. Blazure, Frederick Thompson, James H. Thompson, John Adamson, R. C. Bishop, Charles Barker, Ira B. Pruden, James I. Hill, A. F. Voorhees, S. R. De Coster; I don't know that I have positive knowledge of any others. Jacob K. Lewis kept an account in our bank, and I think this is his signature; I have seen Thomas K. Heath's signature frequently, and I should think that this is Mr. Heath's signature.

Q. Where do all those gentlemen whose names are signed to that paper live, or where did they live in eighteen hundred and sixty-eight; in what township and county?

A. I can't say that they all lived there at that time, whether it was in eighteen hundred and sixty-eight or when, but they all lived near Baskingridge, in Bernards Township.

Q. Which ones are you in doubt about as having lived near Baskingridge, in Bernards Township, at any particular time?

A. I don't express any doubt about any of them except Mr. Fisher and James L. Stevens; they only lived there a few years, and I can't say what years they were.

Q. As to the rest, how long have they lived in Bernards Township?

A. Many years; I can't tell; they have lived there longer than before eighteen hundred and sixty-eight.

Q. Do you know whether any of them were freeholders of the township of Bernards in June, eighteen hundred and sixty-eight; and if so, name them?

A. Robert Blair, James V. Blazure, Frederick Thompson, I. W. Keeler, James H. Thompson, John Adamson, Charles Barker, Ira B. Pruden, S. R. De Coster, were freeholders at that time. I knew John H. Anderson; he is now dead; this is his signature to this affidavit on the paper about which I have been speaking. My impression is that James H. Thompson was a justice of the peace at that time; this is his signature to this jurat.

175 Cross-examination by Mr. VANATTA:

Q. In whose handwriting are the two first written words in that petition?

A. It looks like Judge John H. Anderson's; I think it resembles his very much, that word "Bernards" in particular.

Q. Do you know who called upon the signers of this petition and requested them to sign it?

(Objected to by Mr. Pitney as not proper cross-examination, and he appeals to the counsel not to take up the time of the hearing by this examination at this time.)

A. No, sir.

Q. Was it presented to you for you to sign; and, if so, by whom?

(Same objection by Mr. Pitney.)

A. I think not; I don't remember of its having been presented to me.

Q. Do you know in whose handwriting the body of this order is annexed to this petition?

A. I don't think I do.

(Mr. Pitney states that he doesn't wish to examine the witness further on this paper.

Mr. Vanatta states that he does not now know of anything that he wishes to examine the witness on touching this paper.)

The examination of Mr. Craig was then suspended.

Examination of Mr. Craig resumed this 28th day of December, 1877.

At this point the counsel for the complainant stated that he has no further questions to ask the witness.

176 Mr. Vanatta stated that he wished to ask the witness further questions.

Mr. Pitney objected, and asked the examiner to read the preceding statements of counsel made before Mr. Craig's examination was suspended, and drew Mr. Vanatta's attention to the fact that he had stated that he had no further questions to ask witness touching the paper.

Mr. Vanatta stated that he wished to examine the witness on another subject.

Mr. Pitney then requested the witness to sign the examination as far as it had gone, with the privilege of Mr. Vanatta to continue the examination after the signing as long as he chose.

Mr. Vanatta objected to the witness signing until he had finished his examination.

Mr. Pitney wishes examiner to state that before this a discussion had taken place as to what day an adjournment could be had, and no day could be fixed within a fortnight, and Mr. Pitney protested against the risk of his losing the evidence which had already been taken, in order to give the defendants' counsel an opportunity to go into a long examination of witness, into matters not cross-examination, and insists on the witness signing at complainant's risk and subject to counsel's objection.

Mr. Vanatta objected to the witness signing, and so his examination was continued by the direction of the examiner.

Question by Mr. VANATTA:

Q. Were you an officer of the Passaic Valley and Peapack Valley Railroad Company; and, if so, what officer, and from what time to what other time were you such officer?

177 (Objected to by Mr. Pitney as a bald and unjustifiable abuse of the privileges of cross-examination.)

A. I was treasurer of that road in eighteen hundred and seventy. I tkink I was treasurer at that time a year.

Q. A year from when?

A. I can't say whether from June of eighteen hundred and seventy to eighteen hundred and seventy-one or from eighteen hundred and sixty-nine to eighteen hundred and seventy. I have no minutes of it.

Q. Were you treasurer at no other time, and for no longer time?

(Same objection by Mr. Pitney.)

A. I can't state. I have no memorandum by me by which I can know positively.

Q. Were you a director of that company; and, if so, for how many terms, and from what time to what time?

(Same objection by Mr. Pitney.)

A. I was director at the time I was treasurer.

Q. Were you director only at the time you were treasurer?

(Same objection by Mr. Pitney.)

A. I was director at two different times. I can't say positively whether it was one or two years between the times.

Q. For how long a time altogether were you director?

A. I should say two or three years.

Q. In the winter of eighteen hundred and sixty-nine did John H. Anderson, Oliver R. Stelle, and John Guerin leave in your care and possession bonds purporting to be the bonds issued by them as railroad commissioners for the township of Bernards? I mean all the bonds that they ever signed as such commissioners, or bonds amounting, at their face value, to one hundred and twenty-seven thousand dollars.

178 (Objected to by Mr. Pitney as clearly not cross-examination, and as a most gross and unprofessional abuse of the privilege at this moment, it being now near the hour of adjournment for the day.)

A. I can't say as to the date. They left part of the bonds signed with me at the first off; my impression is that they left with me what they considered to be two installments.

Q. Did not they leave them all with you?

(Same objection, and also as leading.)

A. I can't say about that, but I think not; only the two installments I mentioned.

Q. Did they not sign all of those bonds—all of the one hundred and twenty-seven thousand dollars—before the first of April, eighteen hundred and sixty-nine, and leave them in your possession signed?

A. The first time they left bonds, as I stated before, they left two installments; after that they left the rest of the bonds; at what time they left them I can't say.

D. D. CRAIG.

Sworn to and subscribed before me, at Morristown, this twenty-eighth day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

WILLIAM A. MCMURTRY, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I am fifty-four years of age; I live at Bernardsville, Somerset County, and have lived there five years; I have lived in Bernards Township all my lifetime.

Witness (looking at the original paper of which C 47 is a copy) says:

179 I know all of the men whose names are signed to this paper, I think. There are two James Allens in the township, and we distinguish them by calling one James Shoemaker; I think they all lived in Bernards Township in eighteen hundred and sixty-eight. I am acquainted with the handwriting of Robert Blair, John Mullen, James V. Blazure, Thomas K. Heath, James H. Thompson, Charles Barker, Ira B. Pruden, A. F. Voorhees, S. R. De Coster, and I recognize the signatures of those I have mentioned as genuine on this paper; that is about all. I think all of

those that I have mentioned were freeholders in June, eighteen hundred and sixty-eight.

Robert Blair, John Mullen, James V. Blazure, Thomas K. Heath, James H. Thompson, Charles Barker, Ira B. Pruden, A. F. Voorhees, and S. R. De Coster were all freeholders at that time. I was assessor of the township for eighteen hundred and sixty-eight; I have my blotter for that year here. I recollect now that James I. Hill was a freeholder for twenty years past in Bernards Township; Robert C. Bishop was a freeholder in Bernards Township, I now remember, in eighteen hundred and sixty-eight; I recollect that he purchased property ten or a dozen years ago; Frederick Thompson was a freeholder in that township in eighteen hundred and sixty-eight; so one of the James Allens; George Bender is now, and he was at that time; Charles P. Crue and Isaac W. Keeler were also; also Samuel Elsen, James M. Fisher, and Walter K. Sturgis were freeholders.

Mr. Pitney states that this is all he wishes to ask this witness in regard to these original papers.

Cross-examination by Mr. VANATTA:

Q. Before the commissioners were appointed was this petition shown to you by anybody; and, if so, by whom?

A. I never saw it until to-day.

Q. Were you asked to sign a paper similar to that, or of the same purport as that; and, if so, by whom?

A. I don't think I was ever asked.

180 Mr. Vanatta states that he has no further questions to ask this witness in regard to this original paper.

The paper about which Mr. McMurtry was examined was the original paper produced by and testified about by Mr. Vanderveer, of which C 47 purports to be a copy.

G. W. JENKINS, *Examiner.*

Mr. Pitney resumes the examination of Mr. McMurtry on another point:

Q. How many and what years have you been assessor of the township of Bernards?

A. I was assessor from eighteen hundred and sixty-seven to eighteen hundred and seventy-two, inclusive, and from eighteen hundred and seventy-five to eighteen hundred and seventy-seven, inclusive. The total valuation of the real estate for the year eighteen hundred and sixty-seven, as it appears on my duplicate of Bernards Township, was ($1,281,455) one million two hundred and eighty-one thousand four hundred and fifty-five dollars, and for the year eighteen hundred and sixty-eight the valuation was one million three hundred and twenty-seven thousand seven hundred and sixty-five dollars ($1,327,765). I haven't footed it up for the next year. For the year eighteen hundred and seventy-four the valuation of the real estate of Bernards Township was one million six hundred and seventy-three thousand eight hundred and eighty dollars ($1,673,880). I have not footed up the valuations of real property separately for any other years.

The total valuation of real and personal property in the aggregate, after deducting debts, of Bernards Township, of the following years, was as follows:

1868		$1,448,000
1869		1,556,000
1870		1,282,460
1871		1,550,000
	1872	
181	1873 (I have it from Mr. Stelle's duplicate)	1,873,420
	1874 (also from Stelle's duplicate)	1,861,660
1875		1,708,700
1876		1,740,000
1877		1,677,000

Q. Do you know whether or not it was generally known throughout the township of Bernards by the people of the township, in the years eighteen hundred and sixty-eight and eighteen hundred and sixty-nine, that the project of bonding the township was on foot?

(Objected to as leading.)

A. I think it was pretty generally known.

Q. What makes you think so?

A. From conversations that I had with different parties in traveling over the township; I traveled the township in the summer of eighteen hundred and sixty-eight and that of eighteen hundred and sixty-nine for the purpose of assessing the people. The first work done on the railroad, that is grading, was done in Bernardsville, in Bernards Township; I don't recollect when that was; I think it was in the fall; I don't remember the year; they graded that end of the road first; I don't think they laid the rails on that end of the road first. The road is actually built and in operation now from Summit to Bernardsville; it connects at Summit with the Delaware and Lackawanna; trains are running on the road, and have run regular since the road was finished; two trains run each way every day.

Cross-examination by Mr. VANATTA:

Q. Have you the book in which you took down the names of the tax-payers and the amounts of their real and personal estates in the years eighteen hundred and sixty-seven?

A. I have the original; yes, sir.

Q. The duplicate given to the collector was made out from that original?

182 A. Yes, sir.

Q. Which had the greatest number of tax-payers on it, your original or the duplicate put in the collector's hands, or was there no difference?

(Objected to by Mr. Pitney as an improper mode of proving the fact inquired about.)

A. No difference, as I take it.

Q. Have you heretofore counted the number of tax-payers on your book made in the year eighteen hundred and sixty-seven; and, if so, what was the whole number?

(Objected to by Mr. Pitney, first, as not cross-examination, and secondly, that if intended to contradict the affidavits annexed to the consent papers, Exhibit C 45, and C. 46, it is incompetent under the statute, for defendants to do it.)

A. I don't remember of counting them; we do count them, but I have no record of it; we count them because we are paid by the name.

Q. Did you never count them for any other purpose than to ascertain the number of names for which you were to charge your fees as assessor?

(Same objection.)

A. I don't remember except to get—I remember distinctly counting them in eighteen hundred and sixty-seven or eighteen hundred and sixty-eight; and had no reason for counting them any other year except to settle with the committee.

(Mr. Pitney protests that the examiner has not written down all the witness said.)

Q. Is that all the answer and the only answer you can make to that question?

183 A. I helped to count them in eighteen hundred and sixty-seven or eighteen hundred and sixty-eight, in connection with the railroad commissioners.

Q. How many were there then, all told?

A. I don't remember.

Q. Will you please count them now and tell us how many tax-payers were and are on that book for the year of eighteen hundred and sixty-seven.

(Same objection by Mr. Pitney; and further, that if the counsel wishes to prove that point he must make Mr. McMurtry his witness, and not take up the time of the witness when on the stand by counting the names in a large book.)

A. I can't give it complete from this book.

Q. Give it as completely as you can.

A. Can't you give me more time to do it accurately?

Q. How much more time do you want?

A. I would want to wait until I go home and have another day to answer this question.

Q. I have no objection to witness taking reasonable time.

(Mr. Pitney objects to that time being taken while witness is here under his pay, but that the counsel must bring him here at his own expense.)

Q. Will you leave the book with me to-night, that I may count them up?

A. Yes, sir.

Q. In the summer or fall of the year eighteen hundred and sixty-eight, did you not make an affidavit before James H. Thompson, a justice of the peace of Bernards Township, which affidavit was annexed to certain lists of tax-payers, to the effect or in words that you had carefully inspected the assessment roll of the township for the year eighteen hundred and sixty-seven, and was acquainted with the tax-payers of that township, and that the persons signing said paper-writings were a majority of the tax-payers of said township and represented a majority of the

184 real property of said township, and also were a majority of the tax-payers of said township appearing on the assessment roll of such township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they represented a majority of the landed property of such township?

A. I presume I did; I cannot remember so long. I remember in July of that year going before Justice Thompson and making an affidavit after carefully examining the tax-roll.

Q. Did you mean or intend to say by that affidavit that the names

signed to the consents to which the affidavit referred made a majority of all the tax-payers in Bernards Township listed in the year 1867, including those who did not own land as well as those who did?

(Objected to by Mr. Pitney as immaterial; and further, that it is incompetent for the defendant to contradict or explain the affidavit inquired about.)

Pending this answer to the question, the examination was adjourned, by consent of counsel, to take place at the same place to-morrow morning (December twenty-eight), at half past nine o'clock.

G. W. JENKINS, *Examiner.*

On this twenty-eighth day of December, eighteen hundred and seventy-seven, this examination was continued pursuant to adjournment, in the presence of Mr. Pitney, counsel of complainant, and Mr. Vanatta, counsel of the Inhabitants of the Township of Bernards.

Cross-examination of William A. McMurtry resumed by Mr. VANATTA:

(Question pending at the time of adjournment repeated.)

A. I meant by that affidavit to say that the names represented to
185 be the major part of the real estate for that year—I understood that it was not a majority of the whole number at that time. My recollection of how we got at this thing is that we took the whole amount of the duplicate for eighteen hundred and sixty-seven, and the names that had subscribed for bonding, the real estate that they were taxed with amounted to more than half of the real estate taxed that year, eighteen hundred and sixty-seven. I don't remember counting the names at all any further than that—that year.

Q. What do you mean by that year?

A. The year I made the first affidavit.

Q. Did you count or see counted the number of signatures on the consent papers of the year eighteen hundred and sixty-eight at or before the taking of the affidavit?

(Same objection by Mr. Pitney.)

A. I think I did.

Q. Do you remember the number of signers to those consent papers?

A. I do not.

Q. Was the number greater or less than 250, according to your memory?

(Objected to by Mr. Pitney, because they show for themselves.)

A. I do not remember the number.

Q. Did you or not at the time—that is, at the time the affidavit was made—know that the signers to those consent papers did not constitute a majority of the tax-payers which you had put on the tax-list for the year eighteen hundred and sixty-seven?

(Same objection by Mr. Pitney.)

A. My recollection is that we paid no regard to number that first time. The amount of those that had subscribed, of real estate that they paid tax on, was greater than those who did not.

186 (Question repeated.)

A. I don't think I really know.

Q. When you made that affidavit did you not know that there were

more than five hundred tax-payers named on the tax-list of eighteen hundred and sixty-seven?

(Same objection as before by Mr. Pitney, and further, that it is leading in a matter not cross-examination, and Mr. Pitney contends that defendants' counsel in the present line of examination is making the witness its witness, and must conduct the examination in all respects as if the witness had been called and put upon the stand by the defendant; and that he cannot put leading questions on the subject now asked about, as no questions were asked by complainant on this subject in his direct examination.)

A. I don't think I counted the names at that time.

(Question repeated.)

A. Well, sir, I don't remember the amount of names for them years.

Q. Did you not at the time you made that affidavit believe and have no doubt that there were more than six hundred tax-payers' names on the tax-list of eighteen hundred and sixty-seven, which you made?

(Same objection.)

A. I think if I had reflected over the matter at that time I could have known about what the number was; I had counted the number the year before in settling with the town committee; and now I think the number must have been at least five or six hundred.

Q. You were paid for making the assessment at a certain price per name on the assessment list, were you not?

A. I was.

Q. And those fees were settled and paid to you about what time—that is, the fees for the year eighteen hundred and sixty-seven?

187 A. I think in March, eighteen hundred and sixty-eight.

Q. Don't you recollect the amount of fees that were allowed or paid to you for that year?

A. I do not.

Q. How much a name were you allowed?

A. Twelve cents for assessing.

Q. Did not that, for the year eighteen hundred and sixty-seven, amount to between ninety-seven and one hundred dollars?

A. I can't remember, sir.

Q. Do you or not now know the fact that the signers to the consent papers of eighteen hundred and sixty-eight did not constitute a majority of all the tax-payers listed in the year eighteen hundred and sixty-seven, in Bernards Township?

(Same objection as before.)

A. I know now that they did not.

Q. Who wrote the affidavit of eighteen hundred and sixty-eight that I have been inquiring about? Tell us all you know about that.

(Same objection.)

A. I don't know who wrote it; my recollection is that it was written and in the hands of the commissioners when I came before them.

Q. Where did you go before them—at what place?

A. At John Guerin's.

Q. Were you sent for; and if so, by whom?

A. I was sent for by John H. Anderson.

Q. Before you went to meet the commissioners on that occasion, had anything been said to you about what should be put in the affidavit; and, if so, by whom?

A. Nothing said by any one.

Q. You found the affidavit ready drawn when you arrived there, did you?

A. I did.

Q. Was it read over to you in full, or merely explained to you, or did you read it yourself?

188 A. It was read to me, sir.

Q. You did not read it yourself?

A. Not all of it; it was read two or three times before I signed it; and the railroad law also read two or three times.

Q. Why were the affidavit and law read so often?

A. To try to understand the law.

Q. Who all were there on that occasion?

A. The three railroad commissioners, James H. Thompson, the justice; I think there were others, but I cannot recollect who they were.

Q. Was John Condit Smith or Richard Smith there?

A. I don't think they were at the first meeting.

Q. Can't you name any of the persons besides the commissioners and the justice who were there?

A. I cannot remember; I remember Mr. Guerin's workman was there.

Q. Was there any lawyer there; and, if so, who was he?

A. I think no lawyer.

Q. Did you ask, or did any one say, then and there, who had drawn—that is, written out—that affidavit?

(Same objection.)

A. I don't remember now that I did.

Q. Did you express any doubt about the correctness of the affidavit, or that you were uncertain whether you ought to make it; and, if so, what did you say on that subject?

(Same objection.)

A. I remember hearing it read once or twice, and didn't understand it satisfactorily to myself; there were some other conversation had about it; I don't remember just what; I remember signing it.

Q. Did you examine the consent papers at the time, or rather the signatures to the consent papers at that time?

A. I think I did.

Q. Did you have your assessment book for eighteen hundred and sixty-seven with you then and there?

189 A. I did, sir; one of them for that year.

Q. Did both you and the commissioners examine your assessment book, and also examine the signatures to the consent papers?

(Same objection.)

A. I think we did.

Q. For what purpose was that examination made; or, in other words, what were you trying to find out by that examination?

A. To see whether those who subscribed for bonding were assessed for more real estate than those who had not subscribed.

Q. Did you notice that that affidavit stated that you had carefully inspected the assessment roll of said township for the year eighteen hundred and sixty-seven, and was acquainted with the tax-payers of said township, and that the persons who had signed the consent papers, were a majority

of the tax-payers of said township appearing in the assessment roll of said township for the year eighteen hundred and sixty-seven?

A. My recollection now is that I understood it to be a majority of the real estate; to be or to represent a majority of the real estate.

Q. Please tell us, if you can, Mr. McMurtry, how you got the understanding that that part of the affidavit meant only a majority of the real estate owners; was that your own interpretation of the law and the language of theaffidavit, or was that the way some one else explained the meaning of the affidavit?

A. I think it was my own; after reading the law, I remember signing it.

Q. Did you ask John H. Anderson whether that affidavit didn't go further than the law required and the truth warranted, or something to that effect; and, if so, what did Mr. Anderson say?

(Same objection.)

190 A. I think we read the law and affidavit together, and had a talk over the matter; Anderson, Guerin, and Stelle—we all talked the matter over together.

(Question repeated.)

A. I can't remember, sir, what; I don't remember any conversation with Mr. Anderson in particular that day.

Q. Was there anything said as to whether a majority of the tax-payers of the year eighteen hundred and sixty-seven had signed the consent papers?

A. I don't think there was.

Q. Why do you think so?

A. From reading the law or from my memory how the law read at that time.

Q. Did you not at that time know that you had been paid for assessing, in the year eighteen hundred and sixty-seven, about eight hundred tax-payers in the township of Bernards?

(Same objection).

A. If my attention had been called to it, I could have known the exact amount or number.

(Question repeated.)

A. I must have certainly known that I was paid somewhere between five and eight hundred; I can't remember the number now.

Q. Were you not, in the year eighteen hundred and sixty-nine, requested to make affidavit to additional consent papers; and, if so, who asked you?

(Same objection.)

A. I think Mr. Anderson requested me; I mean John H. Anderson.

Q. Did you ask him, or did he tell you, why another affidavit was wanted from you, or why additional consents had been signed? And if he did, tell us what he said.

191 (Same objection).

A. I think Mr. Anderson told me, or said to me, that the chancellor had decided that the majority of voters was wanting, as well as majority of the real estate.

Q. Did he say a majority of the voters or a majority of the tax-payers?

A. A majority of the poll-tax payers, I think, was his language.

Q. Did you tell him that you had already made an affidavit that a majority of all the tax-payers had signed the consents?

A. I don't think I did, if I understand this question.

Q. Did those consents, about which you made affidavit in eighteen hundred and sixty-nine, or, rather, the consents which were shown to you in eighteen hundred and sixty-nine, make a majority of all the tax-payers in the township in the year eighteen hundred and sixty-seven?

(Same objection.)

A. I think they made a majority of all the poll-tax payers.

Q. But if you counted in women who paid tax, and non-residents who paid tax in your township for land therein, then the signers did not make a majority of all the tax-payers, did they?

(Objected to by Mr. Pitney as leading, in a matter not cross-examination, and because it is not competent for the defendant to contradict or explain the affidavit inquired about.)

A. I think women who paid tax in the township were counted with the poll-tax payers; non-residents, and guardians, and those who had trust-money for other parties or estates were not; that is my recollection now of the count.

Q. In eighteen hundred and sixty-nine did you count up and ascertain, for the purpose of making the affidavit of eighteen hundred and
192 sixty-nine, the whole number of tax-payers on your tax-list for the year eighteen hundred and sixty-seven?

A. I think we did.

Q. What was the majority of the signers to the consents over the tax-payers who had not signed the consents, counting them, as you have previously stated?

(Same objection by Mr. Pitney.)

A. I think the majority was very small.

Q. Are you sure there was any majority.

A. I think there was a majority as I understood it, or I would not have signed it; my recollection is that there was somewhere between two and seven majority.

Q. Were there not signers to the list in eighteen hundred and sixty-nine who were not tax-payers in Bernards Township in eighteen hundred and sixty-seven; and, if so, how many of that class do you recollect?

(Same objection by Mr. Pitney.)

A. I remember two now.

Q. Suppose the commissioners had gone back with the consents to this men who had signed in eighteen hundred and sixty-eight and asked them to sign over again, how many would have done it?

(Objected to by Mr. Pitney as a matter not within the knowledge of this defendant and as a very poor attempt to argue the cause on paper.)

A. I can't say how many.

Q. Would you?

(Same objection.)

A. I think I would myself at that time; I wouldn't later.

Q. When you made the affidavit in eighteen hundred and sixty-
193 eight, why did you not state in that affidavit the whole number of tax-payers in Bernards Township appearing on the tax-list of eighteen hundred and sixty-seven?

(Same objection and as entirely immaterial, and a mere attempt to argue his cause on paper.)

A. I can't recollect why.

Q. Who was the collector in Bernards Township in the year eighteen hundred and sixty-seven?

A. I think Joseph S. Clark; I won't be positive.

Q. Was the work done on the railroad at Bernardsville before there was any work done on it in New Providence Township?

A. My recollection is that they broke ground or commenced work first in Bernardsville; I am not positive about it.

Q. Who was the contractor; who was doing the work on that end of the road?

A. I think Mr. J. G. Todd was subcontractor; I don't know under whom.

Q. How far is the line of that railroad, so far as it is situate in Bernards Township, away from the Morris County line?

A. It is about two miles at Bernardsville from the Morris County line; it comes into the township at Millington.

Q. Then Millington is in Morris County, opposite part of Bernards Township?

A. Yes, sir.

Q. What is the length of the road in Bernards Township from Bernardsville to Millington?

A. Four and a half or five miles, I should think.

Q. In Bernards Township the railroad is farther away from the Morris County line than it is at any other place, is it not?

A. I think it is.

Q. How far southerly from that railroad does Bernards Township extend?

(Objected to by Mr. Pitney as immaterial.)

194 A. Six or seven miles, I should think, from the furtherest point.

Q. How far does Bernards Township extend in a southwesterly direction from Bernardsville?

A. Perhaps about six miles.

Q. And how far in an easterly direction from Baskingridge does Bernards Township extend?

A. I should think about a mile and a half; Baskingridge is one and a half miles from Bernardsville.

Redirect examination by Mr. PITNEY:

On the duplicate for eighteen hundred and sixty-seven, I don't remember how many tax-payers there were. (After referring to a book, witness says:) There are seven hundred and sixty-six, made up by Mr. Vanatta from this book

Q. You loaned your copy of the duplicate for that year to Mr. Vanatta last night, didn't you?

A. Yes, sir.

Q. Can you now state how many tax-payers there were on the list for that year?

A. I cannot of my own knowledge.

Q. The answer of the township in this case sets up that there were eight hundred and four tax-payers on the assessment roll or duplicate for

the year eighteen hundred and sixty-seven; how does that correspond with your recollection?

A. I don't recollect the number for that year.

Q. The answer of the township in this cause also sets up and states that there were two hundred and thirty-six signers to the first set of consent papers, and a hundred and ninety-six to the second set, which two added together would make four hundred and thirty-two; how much majority would that make, according to your mode of calculation, of tax-payers; if there were eight hundred and four altogether, and four hundred and thirty-two signed, how much majority would that be?

A. I make a majority of thirty.

Q. How do you do it?

195 A. I take 432 from 804; that leaves me a balance of 332; no, I have made a mistake; the balance would be 372, and that taken from 804 leaves 432; 372 from 432 leaves 60; the majority is 60.

Q. Have you now here before you any book or other memoranda by which you can answer the following questions:

First. How many tax-payers, resident and non-resident, appear on the books for eighteen hundred and sixty-seven?

Second. How many of those were land owners?

Third. How many were non-resident land owners?

Fourth. How many names appeared twice, being taxed as executors, guardians, or trustees?

A. I have the blotter of that year; there is one page gone; that is all I have.

By consent of counsel the examination of Mr. McMurtry was suspended at this point.

Examination of Mr. McMurtry resumed:

Q. Which page is that?

A. It is the first page in the book.

Q. Does the adjoining page remain so you can tell the number of names on that missing page?

A. I think it does; the missing page is the first page in the "A's."

Q. How many names in A did Mr. Vanatta make in his count?

A. Forty-four, I believe.

Q. Have you gone over the "A's"?

A. Yes, sir; I have.

Q. Did you count those on the missing page?

A. I did.

Q. Including those on the missing page, how many "A's" do you make?

A. I make forty-four.

Q. Then, according to that, Mr. Vanatta must have included the names on the missing page in his account also, did he not?

196 A. I think so.

Q. Have you in your possession or under your control the actual duplicate or assessment roll for eighteen hundred and sixty-seven?

A. I have not.

Q. About how long since it passed out of your possession?

A. Since about September twentieth, eighteen hundred and sixty-seven, when I turned it over to the collector.

Q. Do you not keep an exact copy, as assessor, of the duplicate which you turned over to the collector?

A. I do.

Q. And that is another and different book from the one you have been swearing from to-day and yesterday?

A. Yes, sir; the one I have been swearing from to-day and yesterday is my field book, from which the duplicates are made up.

Q. How long since you parted with your (assessor's) copy of the duplicates of eighteen hundred and sixty-seven?

A. I don't remember.

Q. Do you know now where either of the duplicates of eighteen hundred and sixty-seven is; what is your knowledge as to their being now in existence, and as to whose hands they were in?

A. I do not; the last I ever remember seeing the duplicate that went into the collector's hands was at our last meeting with the railroad commissioners, and the other I don't remember seeing since then; that is the last I remember seeing them.

Q. What information have you of their having been in the hands of Mr. Vanatta, counsel for the township, or in the hands of the township committee, or either of them?

A. I have none; I was talking with Mr. Compton yesterday, now present, one of the town committee; he inquired of me if I knew where the duplicate for eighteen hundred and sixty-seven was; I said to him, I did not, and I also said that it ought to be in their hands, the committee I meant; he said in answer that Mr. Vanatta had had it and had given it back to some one who had asked for it.

197 Q. Did you say that there were two or three of the names on the last set of the consent papers that you swore to that were not on the tax-list of eighteen hundred and sixty-seven?

A. I think I did.

Q. Those you noticed at the time you made the affidavit?

A. Yes, sir; I think I had the duplicate present when I made the last affidavit.

Q. If there are only seven hundred and sixty-six names on your field-book for eighteen hundred and sixty-seven, how would they get any more than that on your duplicate?

A. Any that might be omitted by me as assessor might be put on afterwards.

Q. If the count made by Mr. Vanatta and inserted by him in the answer of the township in this cause is correct, how do you account for your recollection that there was only a small majority of signers to the consent papers when you made your last affidavit to the last set of consent papers?

A. I think that if his count is right I must be mistaken; I am quoting from memory of nine years ago.

Q. Are you not mistaken in having said that if you counted in the non-residents there was not a majority?

A. I don't remember saying that; I didn't mean to say it.

Q. State what your recollection now is on that subject, as to there having been a majority of all the tax-payers to the consent papers when you made the last affidavit.

A. My recollection is that there was a small majority.

Q. You stated that you couldn't recollect all the persons, besides yourself, the commissioners, and the justice, when you made your examination and affidavit to the first set of consent papers; was there anybody present from outside the township, any lawyer or foreigner, if I may use that term, who took any part in the transaction?

A. There was no stranger or lawyer, as I recollect, at the first meeting.

Q. At that first meeting, how long were you examining the duplicate, making the necessary calculation, etc., preliminary to making the affidavit?

198 A. Perhaps two or three hours or more; I can't remember.

Q. How long on the second occasion, or on the occasion of the second affidavit?

A. Perhaps one or two hours.

Evidence having been read over to witness he states that he wishes to make correction, and says:

When I spoke there of counting the names in eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, I meant eighteen hundred and sixty-eight and eighteen hundred and sixty-nine; in this majority of two or seven that I spoke of I meant that it was that after two or three names that I objected to were ruled out, there was yet a majority of from two to seven after that; I can't be positive whether this is the first or second book of that year, that is whether this book from which I have been testifying is the field-book or one of the duplicates.

Question by Mr. PITNEY:

Q. Did you know that the tax-payers in the township of Bedminster, Somerset County, had joined together in a suit in chancery, and obtained an injunction from the chancellor against the railroad commissioners for that township, and prevented the bonding of Bedminster Township?

A. I do not know it for a certainty; I have heard that some of the tax-payers at least had.

Q. Was that the suit in which the chancellor decided in the way John Anderson told you he did?

A. I didn't understand that it was.

Q. When did you first hear of this Bedminster suit, as near as you can recollect.

A. I can't recollect for certain; I think it was later than eighteen hundred and sixty-nine, though.

W. A. McMURTRY.

199 Sworn to and subscribed before me, at Morristown, this twenty-eighth day of December, A. D. 1878.

GEORGE W. JENKINS,
Special Examiner.

GEORGE W. FORSYTH, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I am about forty-five years of age; reside at Morristown; have resided here twenty-two years; I am a practicing lawyer.

Q. Did you ever, as counsel for Moses A. Brookfield, procure from the office of the clerk of Somerset County any official information in regard to

the Bernards Township bonds; if so, state what that was, and what you did with it?

(Objected to by Mr. Vanatta as irrelevant and incompetent.)

A. At the request of Mr. Brookfield I made a requisition on the clerk of Somerset County to furnish me with certified copies of all the papers filed in his office relating to the compliance with the act of the legislature respecting the bonding of Bernards Township in aid of a railroad; I received such copies from the clerk; they were in my office for some months—I won't be certain, but for a year or two—and then I delivered them to Mr. Brookfield.

Q. Did you examine them and give him your opinion on them?

(Same objection.)

A. I did both.

Q. What was the time of that?

A. About the month of March, eighteen hundred and sixty-nine; I judge from the memorandum which I have consulted.

200 Q. Do you recollect whether or not among the papers you got there were certain papers purporting to be consent papers, signed by the inhabitants of the township, consenting to the bonding of the township?

A. My recollection is that there were consent papers, and also the affidavit of the assessor of the township.

Cross-examination by Mr. VANATTA:

Q. Did you make any inquiry or get any information as to what consideration had been given to and received by the commissioners for the bonds they had issued as commissioners? If so, what was it?

A. I made no inquiry; my investigation didn't extend as far as that.

Q. Did you read the consents that had been given as appeared by the certified copies?

A. I have no doubt that I did read the certified copies over entire; I sent for them with that object.

Q. The consent the signers of those papers gave was, that the commissioners might borrow money on the faith and credit of the township at a rate of interest not exceeding seven per cent., and make and deliver the bonds for the money loaned; why was it that you made no inquiry to ascertain whether they had been able to and had borrowed money at seven per cent. interest, at par, on the security of those bonds?

(Objected to by Mr. Pitney as immaterial and not cross-examination.)

A. The reason why I made no inquiry on that point was, unquestionably, because I had received no request to do so.

Q. The request made of you was merely to get copies of the papers, was it?

(Same objection.)

A. I was to get copies of the papers, which I did; was to ex-
201 amine them to see if the requisite number of signers had signed, as appeared from the face of the papers; generally to ascertain whether the directions of the statute had been complied with, so as to authorize the issuing of the bonds.

Q. Did you find out from the papers how many tax-payers had been listed in Bernards Township for the year eighteen hundred and sixty-seven?

(Same objection, and as a waste of time in a poor attempt to emphasize, and repeat, and roll over and over a perfectly patent matter.)

A. I did not; I did not consider it at all material.

Q. Did you find out from the papers the value of the real estate in Bernards Township, subject to taxation in eighteen hundred and sixty-seven?

(Same objection.)

A. Have no recollection that I did; the papers showed a certain state of facts, and I took it that the officers had done their duty and the facts stated were true.

Q. Did you see a protest, signed by certain tax-payers of Bernards, denouncing the bonds as unjust and illegal?

(Same objection.)

A. I won't be certain; if there was such a paper in the clerk's office at that time, I have no doubt that I saw a copy of it.

GEO. W. FORSYTH.

Sworn to and subscribed before me at Morristown, this twenty-eighth day of December, A. D. 1878.

G. W. JENKINS,
Special Examiner.

LEWIS C. BURROUGHS, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

202 I am fifty years old; I live in Morris Township, Morris County, New Jersey; and have lived here in Morris Township since I was six years old; I am a farmer. I have owned bonds of the township of Bernards, Somerset County.

Q. Look at bonds numbers sixty-eight, one hundred and fifty-seven, one hundred and fifty-eight, and one hundred and fifty-nine, and see whether you recognize those.

A. I guess these are mine; I kept them in a tin box, and they got colored a little; I bought them of Moses Brookfield; I paid him eighty-five per cent., eighty-five dollars for each hundred.

Q. How came these coupons that are cut off and pinned fast in this condition?

A. They must have come so while in my possession; I think I cut them off and pinned them fast; guess it was done through a mistake; I didn't notice when I got them that there were no seals on them; I relied on Mr. Brookfield; I also asked Mr. Craig, the cashier of the Iron Bank, about them before I took them; he told me he thought they were a safe investment; I got interest on them for a while; I can't say when I bought them; about seven or eight years ago; I think I got interest on them three years—anyhow I received interest on them two or three times; I understood they were going to sue for them, and so I went in with the rest, and left them in the Iron Bank; I signed a paper; witness (looking at Exhibit B 1) says: This is my signature; I also paid an assessment of eighteen dollars and some cents.

Cross-examination by Mr. VANATTA:

Q. Who did you pay that to?

A. I paid it into the Iron Bank.

Q. To whom?

A. I think I paid it to Mr. Youngblood; I am pretty sure I did.

Q. Whereabouts did you get these bonds?

A. At Moses Brookfield's house.

Q. Had you ever seen them before you got them at Brookfield's house?

203 A. No, sir.

Q. Did you open them and look into them down at Brookfield's?

A. I did; he showed them to me and read them to me, and I did the same.

Q. Did you see whether there were any names signed to them when you bought them?

A. No; I relied on Mr. Brookfield, and I asked Mr. Craig, before I took the bonds.

Q. You did not read them all through, then?

A. I don't know as I did.

Q. You didn't care whether any one had signed them or not, did you?

A. I would care if I knew it was necessay; I went to Mr. Craig and informed myself, and took his word for it.

Q. On the day you got the bonds, did you take the bonds and show them to Mr. Craig?

A. No, sir.

Q. When did you first find out that they had no seals on them?

A. I don't know as I found that out at all until they shut down paying the interest, and then I began to make inquiry, and I was told they were recorded in the clerk's office in Bernards Township, and I supposed they would be safe.

Q. Did you take your bonds back to Squire Brookfield and tell him you wanted your money back again?

A. No, sir.

LEWIS C. BURROUGHS.

Sworn to and subscribed before me, at Morristown, this twenty-eighth day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

CHARLES H. MULFORD, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

204 I am fifty-five years of age; am a clothier in the town of Morristown, and have lived here for thirty-four years; I bought one of the bonds of the township of Bernards.

Witness (looking at bond number thirty-six) says: That is my bond and the number corresponds with my memorandum; I bought it of Moses A. Brookfield, according to my memorandum, which I think is correct, on December fifteenth, eighteen hundred and sixty-nine; I paid him eight hundred and fifty dollars for it in cash, think by check; I did not notice at the time that there were no seals on it; I bought it on the recommendation of Squire Brookfield, who said they were all rig[illegible] I joined in this combination suit and signed this agreement, marked "B 1," now shown me.

Cross-examination by Mr. VANATTA:

Q. Have you paid anything on account of this agreement; if so, when, and how much?

A. I have paid twice; I have paid two assessments; I should judge in the neighborhood of forty dollars. I am not certain of the exact amount.

Q. To whom did you pay it?

A. I think I gave checks payable to the order of Matthew Mitchell.

Q. You said in your principal examination, when you purchased and received that bond, number thirty-six, that you didn't know there was no seal on; what is the reason that you didn't notice that; what was in the way of ascertaining how that was?

A. I took Mr. Brookfield's word for their being all right.

Q. Did you not open your bond and see that it was all right?

A. I can't say whether I did or not.

Q. When did you first discover that there were no seals on?

A. Never, until the present time.

C. H. MULFORD.

205 Sworn to and subscribed before me, at Morristown, this twenty-eighth day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

MOSES A. BROOKFIELD, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I am seventy-six years old; I have resided most of my life in Morristown and vicinity, and reside here now; for the last ten years I have done very little business, unless it was to negotiate securities; I call myself a broker; I dealt in the bonds of the township of Bernards; not when they were first put on the market; as soon as they were put on the market I got Mr. Forsyth to write down to Somerset, to the clerk's office, to ascertain (Mr. Vanatta objects to proving the contents of the letters by parole) if the act had been complied with; I didn't wish to deal in them unless that was so; Mr. Forsyth is a lawyer practicing law in Morristown; we received answer in the affirmative.

(Objected to by Mr. Vanatta.)

Q. After that did you or not deal in the bonds?

A. I did handle considerable of them.

Q. Was your attention called to the circumstance, or did you notice, that there was any defect in them, as that they wanted seals, or anything of that kind?

A. No, sir, never; I was very sure after taking the course I did that they were all right; I never heard it questioned for a long time after.

Cross-examination by Mr. VANATTA:

Q. For how long a time did you deal in those bonds; when was the first and when the last transaction?

206 A. I have no data by which I could answer the question.

Q. Approximate, to the best of your knowledge and belief, to the time.

A. Couldn't say sir; I commenced dealing in them soon after they were issued, and continued dealing in them until this difficulty arose.

Q. I suppose it was three or four years?

A. I cannot say, sir.

Q. What difficulty did you first hear of in regard to these bonds that induced you to stop dealing in them?

A. It was reported that the act had not been fully complied with.

Q. Was that report in connection with the report of a suit having been brought on them?

A. I had not heard of any report of a suit at that time.

Q. Did you deal in them after payment of the interest ceased?

A. Yes, sir; it strikes me that the interest was paid several times while I was dealing in them.

(Question repeated.)

A. No, sir; couldn't.

Q. Of whom did you make the first purchase of those bonds, and how many did you purchase?

A. I couldn't say.

Q. About how many purchases altogether did you make of these bonds?

A. Not many; I didn't deal largely in them.

Q. You say you were a broker; did you buy these bonds on orders for them given to you by customers, or did you buy them for your own use and then sell them out, as you got opportunity, on your own account?

A. The latter.

Q. Did you sell any of them on account of other people, on a commission paid you for making the sale?

A. I never sold one but what I had bought previously and paid for.

Q. Do you think you made as many as fifty purchases of these bonds?

207 A. Not half of it.

Q. As many as twenty?

A. Very doubtful.

Q. What would be the aggregate amount of those bonds which you bought from first to last, taking face value?

A. I have no way to approximate the amount; I should think probably twenty-five or thirty thousand dollars would cover it all.

Q. Did you ever look inside any of those bonds far enough to read them?

A. I don't think I ever read them all—only the outlines.

Q. Did you ever take the trouble to see whether anybody had signed them?

A. I never examined them for that purpose.

Q. Why didn't you?

A. When I opened the bond and see it was executed, I didn't know that there was any necessity to make an examination for that purpose.

Q. Did you open any of them to see if they had been executed?

A. I opened several of them; I couldn't say anything about that now.

Q. What is the reason you did not see that they had no seals on?

A. I presume it didn't occur to me anything about the seal at the time; I am sure it didn't.

Q. At the time you commenced purchasing those bonds, what informa-

tion or understanding did you have relative to the consideration which had been given to the commissioners for those bonds issued as the bonds of the township of Bernards?

A. Well, I think I could only say what I thought from what I heard people say—common report; from that I should have been led to believe that those bonds were issued to assist in making a railroad by the township, and that the township had stock in return; something of that kind.

Q. Then do you mean to say, in short, that you supposed that
208 the commissioners had given out the bonds in exchange for stock in the Passaic Valley and Peapack Railroad Company?

A. Yes, if that is the title.

Q. Please tell us what prices you paid for the bonds you bought; the highest and the lowest.

A. It strikes me, although I won't be positive, that I paid eighty-five to ninety-five.

Q. To whom did you pay ninety-five?

A. I am not positive; I think to Dan. Craig; the last lot I bought I bought of him; it may not have been over ninety; I would not be positive; it is some time since; I hardly think it was over ninety.

Q. Did you not buy some at less than eighty-five?

A. I am not positive; I may have.

Q. Did you not buy some as low as seventy-five?

A. No, sir; I have not the least idea that I ever did.

Q. Did you pay a broker's tax to the United States Government, or take out a broker's license?

(Objected to as immaterial.)

A. I don't think I ever did.

Q. You were a speculator, rather than a broker in securities, were you not?

A. Perhaps I might have been; my attention was called to it, and the party said that I did not come under that head, and did not need license.

M. A. BROOKFIELD.

Sworn to and subscribed before me, at Morriston, this twenty-eighth day of December, A. D. 1877.

G. W. JENKINS,
Special Examiner.

This examination was then adjourned to take place at my office on Friday, January fourth, eighteen hundred and seventy-eight, at ten o'clock in the forenoon, by consent of counsel, and with the understanding that if
Mr. Vanatta should have an engagement in the Essex circuit court
209 the examination should, on said fourth day of January, be again adjourned.

G. W. JENKINS,
Special Examiner.

On this fourth day of January, A. D. eighteen hundred and seventy-eight, Mr. Pitney, counsel for the complainant, appearing at the appointed time and place, and no one appearing for the defendant, I adjourned the

examination to Friday, January eleventh, to take place at my office at 9.30 o'clock in the morning.

G. W. JENKINS,
Special Examiner.

The examination of witnesses in this cause was adjourned from time to time by consent of the respective counsel, and was finally adjourned to be resumed at a time to be agreed on by said counsel.

G. W. JENKINS,
Special Examiner.

The examination of witnesses in this cause was resumed before me, pursuant to notice, of which a copy is hereunto annexed, on which is endorsed the acknowledgment of service of Messrs. McCarter and Keen, at my office at Morristown, on Saturday, the third day of August, A. D. eighteen hundred and seventy-eight, in the presence of H. C. Pitney, esq., counsel for complainant, and Jacob Vanatta, esq., counsel for defendants, The Inhabitants of the Township of Bernards.

G. W. JENKINS,
Special Examiner.

HAMPTON O. MARSH, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

210 I reside in Morristown, and have lived here fifteen years or more; I am president of the National Iron Bank; my father lived at Mendham, six miles west of Morristown; he died in eighteen hundred and seventy; he purchased township bonds of New Providence Township, Union County; I made the purchase for him. (Objected to by Mr. Vanatta as irrelevant.) At his death these bonds came into my hands as administrator; I was his only child.

Q. At what rate did you pay for those New Providence bonds?

(Objected to as irrelevant.)

A. My recollection is at eighty-two and a half per cent.; I bought four thousand dollars of them for my father; I exchanged part of these bonds for Bernards Township bonds—for the one I now hold in my hand (Exhibit C 20); I exchanged with Richard Smith; I think it was within a year of the purchase of the New Providence bonds; the New Providence bonds I purchased in April, eighteen hundred and sixty-nine; the trade was made before there was any default in the payment of the interest on them; I traded the New Providence bond for the Bernards bond even; at the time I took the Bernards bond I did not notice the lack of seals on it; the occasion of my making the trade was that Mr. Smith wanted a New Providence bond and he exchanged with me as a matter of accommodation—as a favor.

Cross-examination by Mr. VANATTA:

I have the balance of the New Providence bonds still; I never sold them.

Q. Has default been made on those bonds; and, if so, when first?

211 (Objected to by Mr. Pitney as irrelevant.)

A. I can't recollect the time, but there has been default made; interest has been paid on these New Providence bonds; it was paid in

New York at one of the banks; I don't know whether or not the township furnished the money to pay it.

Q. Is it not your knowledge or information that the township of New Providence never furnished any money to pay any interest on any of those bonds?

(Objected to as irrelevant.)

A. No, sir.

Q. Are your New Providence bonds in suit now against that township?

(Same objection.)

A. No, sir.

Q. Have you contributed any money to carry on any suit against the township of New Providence on the bonds of that township?

(Same objection.)

A. No, sir.

Q. When and where did you trade with Mr. Richard Smith for that bond No. 89?

A. The exchange was made at Morristown, as near as I can recollect, within a year of the time the purchase of the New Providence bonds was made; I think it was at the Iron Bank; I can't fix the date with any certainty; I have no means of knowing the exact date.

Q. Did Mr. Smith bring the bond (No. 89) with him at the time he delivered it to you, or was it in the Iron Bank before he came there on that occasion?

A. I can't say as to that.

212 Q. Did he not on that occasion get the bonds from Mr Craig, and then deliver it to you in exchange for the New Providence bonds?

A. I have no recollection of anything of that kind being done.

Q. Did Mr. Smith have that bond about his person, in his pocket or his pocket-book, when he came there to the bank on that occasion?

A. I can't say as to that.

Q. Did he deliver it to you with his own hand?

A. Yes, sir.

Q. Was it folded up when he handed it to you?

A. Yes, sir.

Q. Did you unfold it and look at the inside?

A. I have no recollection of doing so.

Q. Did you read the body of the bond, or any part of it, on that occasion?

A. I have no recollection of doing so.

Q. When for the first time did you look at and read the body of that bond and examine the signatures?

A. I have no recollection of the time.

Q. Did you ever do so before to-day?

A. I think I have.

Q. When for the first time, as near as you can tell?

A. I think about the time this suit commenced.

Q. That bond 89 was one of the bonds sued on in this case of Mr. Curtis', is it not?

A. Yes, sir.

Q. Mr. Curtis paid you nothing for that bond, did he?

A. No, sir.

Q. Please tell us why you didn't bring the suit on your own bond in your own name, instead of having it sued in the name of Mr. Curtis?

A. By advice of counsel.

Q. You have contributed to the expenses of this suit of Mr. Curtis?

A. Yes, sir.

Q. Who was with Richard Smith at the time he traded this bond with you?

A. I don't recollect that any one was with him.

213 Q. The trade was made and the bond delivered to you, I suppose, in the director's or president's room of the National Iron Bank, was it not?

A. I don't recollect the place.

HAMPTON O. MARSH.

Sworn to and subscribed before me, at Morristown, this third day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

GEORGE A. LAWRENCE, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I live at Morristown, and have lived here about fourteen years; I purchased bonds of the township of Bernards.

(Witness being shown Exhibits Nos. 29, 38, 39, being bonds 150, 180, and 182, says:)

These are the bonds I purchased; I paid for them eighty-three and eighty-five; I purchased five bonds altogether. I don't remember the exact amount I paid for these; either eighty-three or eighty-five, cash. I don't know the name of the person I bought them of; I bought them at different times; the other two bonds were one hundred dollars each; I bought them at two different times; I think I bought two at one time and three at another; I was at my store on Park Place, Morristown, when I bought them; the man who sold them came in and applied to me to buy them; I did not observe at the time I bought them that there were no seals on them; it was either in eighteen hundred and sixty-seven or eighteen hundred and sixty-eight that I bought them; I think it was in eighteen hundred and sixty-seven; I don't remember the year. I collected some interest on them after I got them; I think I collected two years' interest on them. The coupons were on just as they are now except those I sent to get the interest on; some of them I cut off for collection,

214 which were not paid. I have not fastened any to them myself, except such as were defaulted. I don't recollect about those pinned on now; I didn't pin any on except those I sent for collection.

Cross-examination by Mr. VANATTA:

Q. Did you buy all the bonds which you did buy at your store here at Morristown?

A. Yes, sir.

Q. How far apart were the two purchases; a year, or a month, or a week?

A. Perhaps two weeks—not very far apart; I sold one and traded the

other; I sold the first in eighteen hundred and sixty-nine, and traded the other about eighteen hundred and seventy-four with Henry M. Johnson; I sold the one I sold to J. E. Parker. I don't recollect whether those I sold were the first purchase or the last one. I don't recollect the numbers of those I sold. I don't know the name of the man I bought the first lot of; he came to my store alone; I think I had never seen him before; I think he purchased a hat at my store; he told me he had bonds for sale; he offered them for sale; I was not in the business of a broker or general buyer of bonds, notes, or bills; I bought them as an investment.

Q. How did it happen that a stranger introduced the subject of the sale of these bonds to you; did he say that he had been sent to you?

A. No, sir.

Q. State the conversation as he began it?

A. He said he had been at work on the West Line Railroad, and took these bonds in payment and had them for sale; said he would take off a discount for cash; that they were obliged to take them; that they couldn't get their money; said he would take eighty-five for the first lot I bought; for the second lot he said he would take eighty-three; I purchased at those figures; I won't be positive that both purchases were made of the same man, but I think they were; he didn't say whom he had got the bonds of, except the railroad company; he had the bonds there with him when
215 I made the first purchase. I did not see him have any more with him when I purchased the first lot. I think I gave him a check on the Iron Bank; I have not looked for that check. He handed the bonds to me then and there at the time I gave him the check; they were folded up, I think, at the time he delivered them to me; I don't recollect that I opened them; I think I read them at that time; I can't say positively that I read the signatures to them; I presume I looked to see if anybody had signed the bonds; I don't recollect; I remember seeing John Anderson's name on the bonds, I think on the day I bought them or soon after.

Q. Before you bought the second lot had you not seen that the name of John H. Anderson was signed to the first lot that you had bought?

A. I don't remember as to that; I can't say as to that definitely.

Q. Do you mean to say, or to be understood as saying, that you bought bonds of an entire stranger, who dropped into your store and offered them for sale, and that you drew your check, or otherwise paid for them, and took the bonds without looking who they were signed by, or whether they were signed at all?

A. I did; I don't remember looking at the signature; I looked at the bonds.

Q. What do you mean by saying you looked at the bonds; at what part of the bonds?

A. I looked at them as I would look at any commercial paper; the whole in general.

Q. You mean by that you looked at where the signatures ought to be?

A. I presume so; I don't recollect looking at the signatures in particular.

Q. If you did not look at the signatures, why didn't you look at them?

A. I presumed the bonds were all right.

Q. How could you tell they were bonds unless you looked to see if they were signed by some one or something?

A. No, sir.

Q. Please tell us why you didn't bring the suit on your own bond in your own name, instead of having it sued in the name of Mr. Curtis?

A. By advice of counsel.

Q. You have contributed to the expenses of this suit of Mr. Curtis?

A. Yes, sir.

Q. Who was with Richard Smith at the time he traded this bond with you?

A. I don't recollect that any one was with him.

213 Q. The trade was made and the bond delivered to you, I suppose, in the director's or president's room of the National Iron Bank, was it not?

A. I don't recollect the place.

HAMPTON O. MARSH.

Sworn to and subscribed before me, at Morristown, this third day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

GEORGE A. LAWRENCE, a witness produced on part of complainant, being duly sworn according to law, on his oath saith:

I live at Morristown, and have lived here about fourteen years; I purchased bonds of the township of Bernards.

(Witness being shown Exhibits Nos. 29, 38, 39, being bonds 150, 180, and 182, says:)

These are the bonds I purchased; I paid for them eighty-three and eighty-five; I purchased five bonds altogether. I don't remember the exact amount I paid for these; either eighty-three or eighty-five, cash. I don't know the name of the person I bought them of; I bought them at different times; the other two bonds were one hundred dollars each; I bought them at two different times; I think I bought two at one time and three at another; I was at my store on Park Place, Morristown, when I bought them; the man who sold them came in and applied to me to buy them; I did not observe at the time I bought them that there were no seals on them; it was either in eighteen hundred and sixty-seven or eighteen hundred and sixty-eight that I bought them; I think it was in eighteen hundred and sixty-seven; I don't remember the year. I collected some interest on them after I got them; I think I collected two years' interest on them. The coupons were on just as they are now except those I

214 sent to get the interest on; some of them I cut off for collection, which were not paid. I have not fastened any to them myself, except such as were defaulted. I don't recollect about those pinned on now; I didn't pin any on except those I sent for collection.

Cross-examination by Mr. VANATTA:

Q. Did you buy all the bonds which you did buy at your store here at Morristown?

A. Yes, sir.

Q. How far apart were the two purchases; a year, or a month, or a week?

A. Perhaps two weeks—not very far apart; I sold one and traded the

other; I sold the first in eighteen hundred and sixty-nine, and traded the other about eighteen hundred and seventy-four with Henry M. Johnson; I sold the one I sold to J. E. Parker. I don't recollect whether those I sold were the first purchase or the last one. I don't recollect the numbers of those I sold. I don't know the name of the man I bought the first lot of; he came to my store alone; I think I had never seen him before; I think he purchased a hat at my store; he told me he had bonds for sale; he offered them for sale; I was not in the business of a broker or general buyer of bonds, notes, or bills; I bought them as an investment.

Q. How did it happen that a stranger introduced the subject of the sale of these bonds to you; did he say that he had been sent to you?

A. No, sir.

Q. State the conversation as he began it?

A. He said he had been at work on the West Line Railroad, and took these bonds in payment and had them for sale; said he would take off a discount for cash; that they were obliged to take them; that they couldn't get their money; said he would take eighty-five for the first lot I bought; for the second lot he said he would take eighty-three; I purchased at those figures; I won't be positive that both purchases were made of the same man, but I think they were; he didn't say whom he had got the bonds of, except the railroad company; he had the bonds there with him when
215 I made the first purchase. I did not see him have any more with him when I purchased the first lot. I think I gave him a check on the Iron Bank; I have not looked for that check. He handed the bonds to me then and there at the time I gave him the check; they were folded up, I think, at the time he delivered them to me; I don't recollect that I opened them; I think I read them at that time; I can't say positively that I read the signatures to them; I presume I looked to see if anybody had signed the bonds; I don't recollect; I remember seeing John Anderson's name on the bonds, I think on the day I bought them or soon after.

Q. Before you bought the second lot had you not seen that the name of John H. Anderson was signed to the first lot that you had bought?

A. I don't remember as to that; I can't say as to that definitely.

Q. Do you mean to say, or to be understood as saying, that you bought bonds of an entire stranger, who dropped into your store and offered them for sale, and that you drew your check, or otherwise paid for them, and took the bonds without looking who they were signed by, or whether they were signed at all?

A. I did; I don't remember looking at the signature; I looked at the bonds.

Q. What do you mean by saying you looked at the bonds; at what part of the bonds?

A. I looked at them as I would look at any commercial paper; the whole in general.

Q. You mean by that you looked at where the signatures ought to be?

A. I presume so; I don't recollect looking at the signatures in particular.

Q. If you did not look at the signatures, why didn't you look at them?

A. I presumed the bonds were all right.

Q. How could you tell they were bonds unless you looked to see if they were signed by some one or something?

A. I presume I looked at them; I don't recollect of anything particular now; I saw what they were.

216 Q. Then you saw that they had no seals on them, if you saw what they were?

A. I don't remember about the seals.

Q. When you bought the second lot did you look at the signatures on them, or to see if there were any signatures on them?

A. I presume I did; I don't remember in particular.

Q. When you bought those bonds, was there any reason if you had chosen to look at them why you couldn't and wouldn't have seen that the bonds had no seals?

A. I was inexperienced in the business, and wouldn't have known whether they required seals or not.

(Question repeated.)

A. No, sir; there was not.

Q. Did you ever sell these three bonds, Nos. 150, 180, and 182, to anybody?

A. I passed them to my father, and he gave them back to me; that was in eighteen hundred and sixty-nine; I think April first, eighteen hundred and sixty-nine; he gave them back, I think, the next year; I am the owner of them now; I never sold them to Cyrus Curtis.

I have contributed something to the expense of carrying on this suit of Mr. Curtis'.

Redirect-examination by Mr. PITNEY:

Q. At what time in eighteen hundred and sixty-nine was it that you passed the bonds to your father?

A. About April first, I think.

Q. How long had you had them at that time?

A. I think but a few months.

GEO. A. LAWRENCE.

Sworn to and subscribed before me, at Morri-town, this third day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

217 WILLIAM A. MCMURTRY, a witness, recalled on part of complainant, being duly sworn according to law, on his oath saith:

(Mr. Vanatta objects to the examination of Mr. McMurtry again in this cause.)

Q. Since you were here before have you examined the duplicate of the year eighteen hundred and sixty-eight of Bernards Township to ascertain the total valuation of real estate in that township in that year?

(Objected to by Mr. Vanatta as irrelevant.)

A. I have.

Q. What did it amount to?

(Objected to by Mr. Vanatta on same ground.)

A. I have it with me, if you will allow me to present it or show it. (Looking at a paper witness says:) the whole amount for that year was one million four hundred and forty-eight thousand; that represents the whole taxable property of the township.

Q. I asked you as to the total valuation of real estate.

A. I make that one million three hundred and twenty-seven thousand seven hundred and sixty-five dollars.

Q. Did you ascertain by examination the amount of real estate taxed in the year eighteen hundred and sixty-eight to those tax-payers who had signed the consent papers; I mean the papers consenting to the bonding of the township?

(Objected to by Mr. Vanatta.)

A. Yes; I have.

Q. State the amount of real estate taxed to those people for which they were assessed.

(Objected to by Mr. Vanatta.)

218 A. Seven hundred and forty-two thousand two hundred and five dollars.

Q. How many polls were there on the duplicate of eighteen hundred and sixty-eight, and how many tax-payers on the duplicate for that year?

(Same objection.)

A. I make five hundred and fifty-one polls; the whole number of names that appears is eight hundred and fourteen.

Q. How do you account for that difference between the number of polls and the actual number of names on the list?

(Objected to by Mr. Vanatta.)

A. There appear on the list the names of non-resident real estate owners, females, soldiers, guardians, and executors, and beside the same name of some real estate owners appears more than once for different parcels of real estate.

Q. One man's name appears then several times on the duplicate?

A. It does, in some instances.

Q. Do you know how many non-resident real estate owners' names there were on the duplicate for the year eighteen hundred and sixty-eight?

(Same objection.)

A. I do not.

Q. Have you any farther information now than you had when here before in regard to the duplicate of eighteen hundred and sixty-seven?

A. I don't think I have; I don't know that I have examined it further.

Q. You had a copy of the consent papers furnished you to make the examination, didn't you; and, if so, have you that copy here?

219 A. Yes, sir; and produce it.

(Marked "Exhibit C 51;" Mr. Vanatta objecting to the marking of the paper as an exhibit.)

Q. Did you take off a list of real estate taxed to the persons signing those consent papers in order to arrive at the footing, seven hundred and forty-two thousand two hundred and five dollars?

A. I had it done; I have it here and produce it.

(Marked "Exhibit C 52," on part of complainant.)

(Mr. Vanatta objects to the marking of this paper as an exhibit.)

Q. Do you know the total number of tax-payers on the duplicate of eighteen hundred and sixty-six?

(Objected to by Mr. Vanatta.)

A. Seven hundred and fifty-six.

Q. And the total number of polls for that year?

A. Five hundred and seventy-one, I have it.

Q. And the difference between the number of polls and the total number of names on the duplicate of that year, how would you account for it?

(Objected to by Mr. Vanatta as a matter on which witness has no right to give an opinion, and on the ground that the opinion is irrelevant if he does give it.)

A. In the same way that I did for eighteen hundred and sixty-eight.

Q. Can you give us to-day the number of polls on the duplicate for eighteen hundred and sixty-seven?

A. I cannot; I have neither the duplicate for eighteen hundred and sixty-seven nor blotter here.

220 Cross-examination by Mr. VANATTA:

Q. Did you ever examine the original consent papers and the signatures to them; I mean the consent papers said to have been filed in the clerk's office?

(Objected to by Mr. Pitney as having been already asked and answered, and as not proper cross-examination.)

A. I think I did.

Q. Did you examine those signatures with a view to detecting whether there were any false or forged signatures on them; and, if so, how many of that character, if any, did you discover?

A. I detected or rejected some on the second year that had signed the year before. I think there were three or four of that kind.

(Mr. Pitney makes same objection.)

Q. Did you detect any signatures which had been put there without the knowledge, authority, or consent of the man whose name was there?

(Objected to by Mr. Pitney as having already been asked about, and as generally incompetent, as witness has shown no knowledge as to any person's name having been signed without his consent to those papers.)

A. I did not.

Q. Did you see among the signatures to those papers the name of Ira B. Pruden?

A. I can't remember to-day whether I did or not.

Q. Do you know his handwriting?

A. Well, I can't say that I do. I saw something of it some years ago.

Redirect examination by Mr. PITNEY:

Q. Do you know the handwriting of John H. Anderson, Oliver R. Stelle, and John Guerin?

221 A. I am acquainted with John H. Anderson's handwriting. I don't know the handwriting of the other two.

W. A. McMURTRY.

Sworn to and subscribed before me, at Morristown, this third day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

DANIEL D. CRAIG, a witness recalled on part of complainant, being duly sworn according to law, on his oath saith:

Q. Are you acquainted with the handwriting of John H. Anderson, Oliver R. Stelle, and John Guerin?

A. I am acquainted with the handwriting of John H. Anderson and John Guerin. I have corresponded with Mr. Stelle a very little.

(Paper shown witness purporting to be a power of attorney to vote on stock, and he is asked:)

Q. Do you recognize the signatures on this paper?

A. I recognize those of Anderson and Guerin.

(This paper marked "Exhibit C 53," Mr. Vanatta objecting to it as irrelevant, the paper itself being void and nugatory.)

Witness (being shown the bonds marked Exhibits C 1 to C 44 inclusive) says: I have looked at the signatures on these bonds. The signatures are those of John H. Anderson, John Guerin, and Oliver R. Stelle. I am well acquainted with the signatures of Anderson and Guerin, and these on the bonds are theirs, and, to the best of my knowledge, that is Mr. Stelle's signature on the bonds; I would believe it to be genuine.

222 (Book purporting to be book of certificates of stock of the Passaic Valley and Peapack Railroad Company being shown witness, he says:) I have seen this book before. It is a book of certificates of stock of the Passaic Valley and Peapack Railroad Company. Beverly C. Sanders, whose name appears on them, was secretary of the board of directors of this Passaic Valley and Peapack road. The signatures of Beverly C. Sanders to these certificates of stock are genuine. I am acquainted with his handwriting. Some of these certificates are sealed with the seal of the Passaic Valley and Peapack Railroad. I know, because I was connected with that company, and I recognize this as their seal.

Q. I see by this book, which you now have in your hand, several certificates, which appear to have been issued and cut out, and then to have been pasted back again in the book; what does that indicate, Mr. Craig?

A. That there has been a sale or transfer of the shares, and the certificates surrendered.

Q. Look at certificate No. 32 in this book, and see if you recognize the signatures to that certificate.

A. I recognize the signatures of the secretary, Beverly C. Sanders, and John H. Lyon, president; I recognize the signatures of Anderson and Guerin to the endorsement on the back of the certificates, and, I believe, Mr. Stelle's; William Ferguson, whose name is on the back as witness, was a friend of Mr. Beekman; I don't know where he is now; he lived in New York when I knew him; he was related, I believe, to Benjamin F. Beekman, who lived in New York; I don't know who F. F. Vanderveer was.

(The book marked "Exhibit C 54," on part of complainant.)

D. D. CRAIG.

Sworn to and subscribed before me, at Morristown, this thirdday of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

Mr. Pitney offers in evidence a paper, purporting to be a certified copy of the application to Judge Dalrimple, by freeholders of the town-
223 ship of Bernards, for the appointment of the commissioners, and also of the order of Judge Dalrimple, making such appointment of commissioners.

(Marked "Exhibit C 55," on part of complainant.)

Mr. Pitney also states that the examination of witnesses on part of the complainant is closed.

GEO. WALKER JENKINS,
Special Examiner.

224 United States circuit court, district of New Jersey. In equity.

BETWEEN CYRUS CURTIS, COMPLAINANT, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS and the executors of Benjamin F. Beckman, dec'd, et als., defendants.	On bill, &c. Examination.

Examination of witnesses on part of defendants, the Inhabitants of the Township of Bernards, taken before me at my office, at Morristown, by consent and in presence of counsel, H. C. Pitney, esq., counsel for complainant, and Jacob Vanatta, esq., counsel for defendants, the Inhabitants of the Township of Bernards, and the commissioners Stelle and Guerin, in pursuance of an order of said court hereunto annexed, on this thirteenth day of August, A. D. eighteen hundred and seventy-eight.

GEORGE W. JENKINS,
Special Examiner.

225 JOHN O. RUSH, a witness produced on part of defendants, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath, saith:

My age is fifty-six, and my place of residence is at Bernardsville, in the township of Bernards, in the county of Somerset; I have resided in that township since eighteen hundred and sixty-four; I was a member of the township committee of that township; I was a member three years, eighteen hundred and sixty-nine, eighteen hundred and seventy, and eighteen hundred and seventy-one; I was chairman of that committee in eighteen hundred and seventy-one.

Q. While you were a member of that committee, did that committee pay or furnish any money to pay any interest on any bonds, or what purported to be bonds of that township, issued to take stock in the Passaic Valley and Peapack Railroad Company?

A. I did not.

Q. Did you sign any consent to the issuing of bonds to raise money to invest in stock of that company by the township?

A. I did.

Q. Who presented the paper to you and asked you to sign, if anybody?

A. I think Mr. Anderson and Mr. Smith—John H. Anderson; I can't give the first name of the other one; it was the biggest of the two Smiths.

Q. Do you remember whether he was called Colonel John Smith, or not?

A. He was called Colonel Smith.

Q. When they asked you to sign that paper, did you ask them any questions; and, if so, what were they?

A. I told them I didn't want to get in any scrape, and they said there

wasn't no scrape in the matter, and then they said that the railroad was going to be built clear through to the Delaware River, and that we would never have to pay any interest, and would never have to pay any money, because we should hold the first claim on the road; then I said, "if that is the case, then we are safe enough."

226 Q. Do you remember what Colonel Smith said about it on that occasion?

A. I can't just remember what was said; I believe Col. Smith said that there wouldn't be any danger at all; he said just about what Mr. Anderson did—both about the one thing.

Q. Was Col. Smith in any way connected with that railroad at that time; and, if so, what had he to do with it?

(Objected to by Mr. Pitney, for want of knowledge on part of witness.)

A. I don't know.

Q. Do you know who the contractor for building that part of the railroad was at that time?

A. It was Smith's brother; I have forgotten his name; I think his name was Richard Smith; they used always to call him Dick.

Q. Was John H. Anderson at that time in any way connected with the railroad company; and, if so, in what way?

A. I think he was commissioner and director.

Q. What kind of commissioner do you mean?

A. I mean township commissioner.

Q. Commissioner of or for what?

(Objected to for want of knowledge on part of witness, and as matter to be proved by the records.)

A. Commissoner to get signers for to bond the township.

Q. How long about was John H. Anderson a director of that company?

(Objected to for same reason.)

A. I think he was a director from the time the railroad started, all except one year, until Beekman took it; then he was president.

227 Q. Do you mean that he was president of the road or the company at the time Beekman took it, or during that year when he was not a director?

A. He wasn't a director the year before Beekman got it?

Q. Who was president at the time Beekman got it?

A. Judge Anderson. No, Judge Packer was president when Beekman got it.

Q. Who was the senator in the senate from the county of Somerset in the year eighteen hundred and sixty-eight?

(Objected to for want of knowledge on part of witness.)

A. John H. Anderson.

Q. Do you recollect whether he was the senator for one or two terms from that county—I mean three or six years?

A. Three years.

Q. Do you recollect which year he became senator?

A. I do not.

Q. Do you remember who represented your assembly district in the State legislature in the year eighteen hundred and sixty-eight?

A. John G. Bergen.

Q. Where did he reside?

A. In Somerville.

Q. How far was your residence at that time from John H. Anderson's residence?

A. A quarter of a mile.

Cross-examination by Mr. PITNEY:

Q. You are a good deal deaf, arn't you?

A. I am a little deaf.

JOHN O. RUSH.

Sworn to and subscribed before me at Morristown, this thirteenth day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

228 CHARLES N. CONKLING, a witness produced on part of defendants, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am fifty-six years old, and reside at Liberty Corner, Bernards township, Somerset County.

Q. If you have been a member of the township committee of that township, state how many years, and which years.

A. Four years. Eighteen hundred and sixty-seven, eighteen hundred and sixty-eight, eighteen hundred and sixty-nine, and eighteen hundred and seventy.

Q. What was your position in the committee?

A. The last two years I was chairman of the committee.

Q. Did that committee, at any time while you were a member of it, pay or provide any means to pay any interest on bonds purporting to be bonds of that township, issued to obtain money to invest in the stock of the Passaic Valley and Peapack Railroad Company?

A. It did not, at no time while I was in the committee.

Q. Did you sign a consent to the issuing of bonds to borrow money upon the credit of the town to invest in the stock of that company?

A. I did not.

Q. Were you asked to do so, and if you were, who asked you?

A. I was, by John H. Anderson.

Q. What reasons, if any, were presented to you in favor of signing the consent?

(Objected to by Mr. Pitney, because it appears that witness didn't sign the consent.)

A. Well, they said it would be a paying road; that the township would be secured; that they would never have any money to pay. That is about all. They didn't say much to me, for I was tooth and nail against it. I was not in favor of the bonds.

229 Q. Was there any statement to you on that occasion of the means by which the township would be protected from having anything to pay?

(Same objection by Mr. Pitney.)

A. That they would have the first mortgage; I think that is what Anderson told me.

Q. Tell us, as nearly as you can, about how long it was before you

were asked to sign that consent, that that railroad company had been organized; or about how old the organization was before they were asked to sign that consent.

(Objected to by Mr. Pitney for want of knowledge on part of the witness.)

A. I couldn't tell you with any accuracy; perhaps six months; perhaps eight.

Q. Was John H. Anderson acting as a director of that company; and, if so, from what time to what time?

(Same objection by Mr. Pitney.)

A. He did act as director; I could not tell the time; I don't know; I have forgotten.

Q. Tell whether a long or short time.

A. Perhaps eighteen months; I think, probably about that time.

Cross-examination by Mr. PITNEY:

Q. Who was with John H. Anderson when he asked you to sign that consent?

A. I think he was alone.

Q. You don't mean to say now that you have a recollection that John H. Anderson told you that township would have a first mortgage on the railroad?

A. I think he did.

Q. Didn't you laugh at him, and tell him he must be a fool to talk that way to you?

2:30 A. I did not.

Q. Did you think he was a fool to talk to you in that way?

A. I did not.

Q. You had read the law, hadn't you?

A. I can't say about that.

Q. Didn't you, and every intelligent person who took any pains to inform himself on the subject, know perfectly well that there was no provision in the act of the legislature providing for bonding the township, or anywhere else by which the township was to be secured by a mortgage?

A. I suppose that most of the signers did; I might have known it at the time; I have no doubt I did.

Q. You knew the township was to have stock in the road, didn't you?

A. That was what I supposed.

Q. How, then, did you account for John H. Anderson's attempting to palm off on you such a cock and bull story as that the township should have the first mortgage on the road?

(Objected to as irrelevant; the witness being under no obligation to explain the motives of Mr. Anderson's conduct.)

By Mr. PITNEY. The witness is under an obligation to answer the question, and it is highly improper for the counsel to suggest to the witness that he is not under an obligation to answer.

A. I didn't undertake to account for it.

Q. Didn't you at the time think that it was audacious conduct on the part of Mr. Anderson to tell you such a story?

A. I don't know; at the time I might not have known that they were to take stock instead of first mortgage bonds; the understanding of a great many was that the township was to have the first claim on the road,

and a great many signed with that understanding, and believing that *he* be so.

231 (The last part of the answer objected to by Mr. Pitney as not responsive to the question, and as not within the knowledge of the witness.)

Q. Did you think John H. Anderson was trying to deceive you?

A. I don't know that at that time I did.

Q. How long had he lived in the township of Bernards?

A. I couldn't tell.

Q. He lived in the township of Bernards all his life-time, didn't he?

A. I believe he had.

Q. He was surrogate of the county at one time, wasn't he?

A. He was.

Q. He was judge of the court of common pleas at one time, wasn't he; and State senator, wasn't he?

A. He was.

Q. Administrator of a great many estates, and executor of a great many wills, wasn't he?

A. I believe he was.

Q. Did you read the consent paper which you were asked to sign?

A. I think he read it over to me himself; I am not positive about that.

Q. And you read the law, did you not, published in the newspapers?

A. I don't think I did.

Q. It was published in the news-papers, wasn't it?

A. I believe it was.

Q. What was John H. Anderson's reputation for honesty in the county of Somerset?

A. Very good.

CHAS. N. CONKLING.

Sworn to and subscribed before me, at Morristown, this thirteenth day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

232 JOHN COMPTON, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am fifty-four years of age; I reside at Liberty Corner, Bernards Township, county of Somerset; I have been a member of the township committee of Bernards township from eighteen hundred and seventy-one to the present time; I was made chairman in the spring of eighteen hundred and seventy-two, and am chairman still.

Q. Since you have been a member of that township committee has the committee paid or furnished any money to pay any interest on any of the bonds or alleged bonds of that township issued to borrow money to invest in the stock of the Passaic Valley and Peapack Railroad Company, otherwise called the West Line Railroad Company?

A. It has not.

Q. Did you sign the consent papers authorizing the borrowing of money for that purpose or the issuing of any such bonds?

A. I did not.

Q. Were you asked to do so; and if so, by whom?

A. I was asked by Oliver R. Stelle.

Q. To what extent, if any, has the making of that railroad, so far as it has been made, advanced or increased the value of real estate in that township for taxing purposes, or for any other purposes?

A. I should think but very little, taking the township as a whole.

Q. Has it increased the market value of your real estate; and if so, to what extent, in your judgment?

A. I suppose it has on the immediate line of the road.

Q. Why do you think so?

A. I should have signed at the time of putting the road through; but very trifling, if any, at the present.

Q. What reason, if any, have you for thinking that it has improved the present market value of any land in that township?

A. From the little benefit derived from having the road.

233 Q. Is that benefit equal to the interest on one hundred and twenty-five thousand dollars a year?

A. No, sir.

Q. Will the presence of such a debt as that be likely to make your place a desirable one in which to purchase property?

(Objected to as leading and irrelevant.)

A. It would not.

Q. What amount of tax is annually raised in the township, the average for the last ten years?

A. It would average about seventeen thousand dollars per year for the last ten years; the State, county, and township taxes included, which is a dollar to a dollar and fifteen cents to the hundred, to the best of my recollection.

Q. Does that aggregate of seventeen thousand dollars include all assessments for school purposes?

A. I am not certain; but I am under the impression it does.

Q. Did it include special assessments in particular school districts imposed for the extra advantage for their special district?

A. I think not.

Q. Who was the senator from your county in the State legislature in eighteen hundred and sixty-eight?

A. John H. Anderson.

Q. State if you can from what time to what time he was State senator.

A. I think in eighteen hundred and sixty-seven, eighteen hundred and sixty-eight, and eighteen hundred and sixty-nine.

Q. Do you know of his acting as a director of the Passaic and Peapack Railroad Company?

A. Only from hearsay.

Q. Do you know of any citizens of Bernards township having petitioned for the passage of the act authorizing the townships along the line of the Passaic Valley and Peapack Railroad to issue bonds and to take stock in that railroad company?

234 (Objected to as irrelevant and immaterial.)

A. I do not.

Q. Tell me if you can whether that bonding scheme was the project of the people of your township, or a scheme originating with the railroad company.

(Objected to as leading, irrelevant, immaterial, and for want of knowledge in the witness.)

A. My impression was with the railroad company.

Q. Who was representing your district in the assembly in eighteen hundred and sixty-eight?

A. John J. Bergen, to the best of my recollection. He was representative, I think, in eighteen hundred and sixty-eight and eighteen hundred and sixty-nine. I think he lived at Somerville, Bridgewater township. This railroad doesn't go through that township.

Cross-examination by Mr. PITNEY:

Q. Have not lands in Bernards township been sold in good faith since the railroad was commenced to be built for double of what they could have been sold for before the building of the railroad was agitated?

A. They might have been in a few instances at the terminus of the road.

Q. Has there not been a large increase of population in the neighborhood of Baskingridge and Bernardsville, which population has brought money into the township and expended it in the improvement of real estate there?

A. The increase has not been large; there has been considerable money expended.

Q. Have you compared the valuations of real estate on the assessor's duplicates for the last fifteen years to see whether there has been any increase in the values of real estate or not?

(Objected to by Mr. Vanatta as only showing the private notion of the individual who happens to be assessor.)

235 A. I have not examined for the purpose of ascertaining the difference between fifteen years ago and the present.

(Question repeated.)

(Mr. Vanatta objects to having question repeated, because it had been already answered.)

By Mr. PITNEY:

I didn't ask you about comparing fifteen years ago and now, as you can see by attending to the question.

(Question repeated.)

A. I don't know how to answer the question any different from what I have.

Q. How many duplicates have you examined?

A. I have not examined any for that purpose.

(Question repeated.)

A. I suppose I have examined about seven.

Q. Of what years?

A. From eighteen hundred and seventy-one to the duplicate of eighteen hundred and seventy-seven.

Q. Do you know what the assessor's valuations of real estate were in Bernards Township for the years eighteen hundred and sixty-four, eighteen hundred and sixty-five, eighteen hundred and sixty-six, or either of them?

A. I do not.

Q. You say in your direct examination that the value of real estate in the township of Bernards has been increased or advanced in the township for taxing purposes, or any other purposes, "but very little, taking the township as a whole;" what do you mean by "taking the township as a whole" in that connection; do you mean that the value of real estate in any part of the township has been diminished by the building of the railroad?

A. I think it has.

Q. In which part?

236 A. In the southern part.

Q. How do you account for it?

A. Through fear of these township bonds.

Q. That is the cause which you believe to exist for the diminution of the values of real estate, is it?

A. I do.

(The witness being about to proceed with his answer Mr. Pitney objects to his answering further unless it is strictly responsive to the question.)

Witness continues: I do, because purchasers of real estate don't want to run any risks in purchasing real estate in the township.

Q. Have you any information as to whether or not the assessors of the township have reduced the valuations in the southern part of it for the reason which you have mentioned?

A. I don't know whether they have or not.

Q. In the regular course of business, according to the statute, the assessors of the county meet each year, do they not, to revise the assessments and apportion the tax of each township?

A. So I understand it.

Q. And the township committee of each township meet to revise the duplicate of each year, do they not?

A. They do.

Q. Is the soil of any part of Bernards Township adapted for the raising of fruit for market?

A. Some parts of it.

Q. What sort of fruit?

A. Peaches, where the land is not too poor.

Q. But for this railroad, how could any peaches from Bernards Township be got to market?

A. They prefer and do take them to the Central road, because it is handier.

Q. Do you mean to say that the West Line Railroad has not carried a very large freightage of peaches from Bernards Township to New York?

237 A. When you take the north part of the township I suppose they have; those in the southern part I know have gone to the Central the last year or two.

Q. Was the answer to my previous question then, truthful according to the spirit of the oath you have taken?

A. It was, as I understand it.

Q. Is it true as a general proposition, or is it the truth to say generally, without qualification, that it is handier for the people of Bernards Township to send their peaches to New York by the Central Railroad than by the West Line Railroad?

(Objected to because the previous question did not imply what this one asserts.)

A. While it is handier for one part to send by the West Line; those in the other part chose to send them by the Central road.

Q. Is that your only answer to that question?

A. I believe it is, sir.

Q. In what part of the township do you live?

A. A little south of the centre of the township.

Q. How far from the nearest station of the Central road?

A. It is called seven miles.

Q. How far do you live from the nearest station of the West Line road?

A. At least two and a half miles; that is the station "Lyons."

Q. What was the nearest station on the Central road?

A. Somerville.

Q. Liberty Corner is in the southerly part of the township of Bernards, isn't it?

A. It is.

Q. Isn't the great bulk of the population of Bernards Township, and of the wealth of that township, to the north of Liberty Corner?

A. The bulk is.

Q. Do you mean to say that it is more convenient for the inhabitants of Liberty Corner and that neighborhood to make use of the Somerville station of the New Jersey Central Railroad, than the Lyons station on the West Line Railroad?

238

A. I do not mean to say it.

Q. Please look at this map of Bernards Township and Somerset County now shown you, and tell me what proportion of the township of Bernards finds it more convenient to use the Somerville than the Lyons station?

A. It is a small proportion.

Q. Does it, in your judgment, extend beyond the little tit or projection of Bernards Township which lies to the south of Dead River?

A. I don't know that it does.

Q. Is not that southern portion lying to the south of Dead River in the main very mountainous, and poor, and sparsely inhabited?

A. It is.

Q. Is not the road between Liberty Corner and the vicinity and Lyons station a pretty good road, free from hills?

A. A pretty good road.

Q. Is not the road from Liberty Corner to Somerville a pretty bad road, crossing two mountains?

A. I don't call it a very bad road; it is a mountain road; it crosses two mountains.

Q. Whereabouts did Oliver R. Stelle live, and where has he lived for the last ten years, and more?

A. At Millington.

Q. At Millington, or how far from Millington?

A. It might be said to lie a little between Millington and Liberty Corner.

Q. Where did John Guerin live?

A. Baskingridge.

Q. And John H. Anderson?

A. Near Bernardsville.

Q. Was it not in contemplation at one time to run the railroad directly through Liberty Corner and thence to the westward?

A. It was so said.

Q. Was not the route surveyed?

A. It was, it strikes me, after they commenced grading the present road.

239 Redirect examination by Mr. VANATTA:

Q. Which was the cheapest route for sending peaches to the New York market by people who lived in the southern part of Bernards Township, by way of the Central Road or by way of the New Jersey West Line?

A. By the New Jersey Central, from the fact that they sent them that way; I mean that is the reason why they sent them that way.

Q. Can you tell what the cost was to send them one way and by the other?

A. I cannot.

Q. Can anybody in Bernards Township send any peaches to market by the West Line at this time?

A. They cannot.

Q. Or passengers travel on it?

A. There are no passenger trains.

Q. You spoke of some lands near the terminus of the road having been sold for double the former prices; can you tell whether those lands were paid for in money or its equivalent at the time, or whether the purchase price was secured by mortgages which never have been paid and never will be?

A. There is land that has not been paid for; others that I think have been; in some instances they are mortgaged for more than they are supposed to be worth.

Recross-examination by Mr. PITNEY:

Q. You are a member of the town committee now, aren't you, and have charge of this suit?

A. Yes, sir; in a measure.

Q. How long since trains have stopped running on the West Line road?

A. Since last night; notice came to the office to that effect.

Q. A change in the ownership has taken place, hasn't there?

A. I have understood so.

Q. And there is some question about the possession of the road in the mean time, isn't there?

240 A. I don't know.

Q. Hasn't Mr. Vanatta just explained it orally in your presence?

A. I suppose he did.

Q. There have been very heavy rains within ten days, haven't there?

A. There has.

Q. Is it notorious that the road has been bought by the Delaware, Lackawanna & Western Railroad Company?

A. It is so reported.

Q. Do you know where the assessor's duplicate for Bernards Township for eighteen hundred and sixty-seven is?

A. I do not.

Q. Did you at one time have it in your possession?

A. I think not.

Q. Did Mr. Vanatta have it in his?

A. I think our town clerk brought a duplicate up here—I can't say whether it was for eighteen hundred and sixty-seven or eighteen hundred and sixty-eight—for Mr. Vanatta to look at; I have no recollection what he did with it.

Q. Has any search been made for that duplicate?

A. I don't know, sir, unless the assessor made one.

Redirect examination by Mr. VANATTA:

Witness being shown the written notice purporting to be signed by taxpayers of Bernards Township, dated third of December, eighteen hundred and sixty-nine, he is asked whether he has previously seen that paper; and, if so, when and where for the first time.

A. I don't know that I have seen this particular paper; I have seen one that purports to be the same thing.

Q. Do you know the signatures to that, or any of them; if so, which of them? Name them.

A. I don't think I recognize any of them on this paper.

Q. Do you know any of the individuals whose names are there?

A. I do know them all.

241 Q. Were they at that time residents of Bernards Township?

A. I believe they were.

Q. Where was it that you first saw a paper like that, if not that one?

A. It was at Liberty Corner; I think at Francis Runyon's. I have a bundle of papers, handed to me by Francis Runyon, just like this. He thought I was the proper person to hold those papers. It was some three or four years ago that he handed them to me.

Q. How near the date of that paper?

A. It must have been three or four years after the date of this paper, as near as I can recollect.

Q. Was that paper or one like it published in the county papers; and, if so, about what time?

(Objected to as irrelevant.)

A. It was, about the date of this paper—December, eighteen hundred and sixty-nine. I think it was the Somerset Messenger in which I saw it published.

Q. Do you remember whether or not you delivered that paper to me; and, if so, when?

A. I think I recollect delivering to you this paper; the time I can't recollect.

Q. You say Francis Runyon delivered to you a bundle of papers like that. Do you mean to say that they all had the same names on as that?

A. No, sir.

Q. Explain, then, what you mean.

(Objected to as proving contents of a paper and as generally irrelevant.)

A. Papers headed, I suppose, as this one was, and circulated through other parts of the township to get signatures.

Q. Do you mean notices like that, signed by different persons?

242 (Objected to as leading.)

A. I mean that.

(Offered in evidence and marked "Exhibit B 2," on part of defendants.)

(Mr. Pitney objects to the offering of the paper in evidence and marking as an exhibit.)

Question by Mr. PITNEY:

You heard at the time, didn't you, that the township of Bedminster had got an injunction against the issuing of bonds in that township?

A. I heard they had; I don't know how long after the injunction was granted.

Q. The township of Bedminster adjoins the township of Bernards, doesn't it?

A. It does.

Q. And do you know any reasons why the discontented tax-payers of Bernards didn't apply to the chancellor for an injunction, too?

A. I do not.

Q. There was a discontent arose, wasn't there, in the township of Bernards about the issuing of these bonds?

A. There was.

Q. When did it arise?

A. With some very soon after giving their consent.

Q. And the question was generally discussed, wasn't it, throughout the township?

A. I don't know how it was throughout the township; there was some, but no great amount, to the best of my recollection.

Q. Was not the principal part of the opposition to the scheme in your part of the township?

A. I don't know as it was. There might have been more there than there was in the upper part.

Q. Was it not generally known throughout the township that these bonds were being issued, and the road being built more or less out of the proceeds of them?

243 A. I don't know, sir.

Q. You knew it, didn't you?

A. I don't think I did, sir.

Q. Didn't you know that the commissioners were issuing these bonds, and the railroad getting them and building the road on the proceeds?

(Objected to as immaterial.)

A. I didn't know it to any extent; I mean by that the bonds were not all used, and shoved off in bulk or nearly so.

By Mr VANATTA:

Q. Did you know, or had you any means of knowing, what the railroad company did with the town bonds, or with what money the road was built, so far as money was used for that purpose?

A. I did not.

JOHN COMPTON.

Sworn to and subscribed before me, at Morristown, this thirteenth day of August, A. D., 1878.

G. W. JENKINS,
Special Examiner.

OLIVER R. STELLE, a witness produced on part of defendants, The Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am fifty-two years of age and reside at Millington, Bernards Township, Somerset County; I reside about two and a half miles from John Compton's residence; I was one of the commissioners appointed to carry out the bonding act in that township.

Q. Were you a candidate for that position?

244 (Objected to as immaterial and irrelevant.)

A. I objected to serving at the first interview that was held with me; answering your question direct, I say I was not.

Q. Did you know that your appointment was proposed until after the appointment was made.

A. I did not know I was proposed before the judge; I was asked to serve.

Q. By whom?

(Objected to as immaterial and irrelevant.)

A. Judge Anderson and Mr. John H. Lyon.

Q. How long before your appointment, if it was before, was that request made of you?

A. I can't say positive; I should say a few weeks.

Q. Who first informed you that the judge had appointed you?

(Same objection.)

A. I think it was John H. Anderson, or a gentleman by the name of Condict Smith, if I have his name correct; I am not sure which; he was a large man, called Col. Smith.

Q. Before that had you given your consent to serve?

(Same objection.)

A. No, sir.

Q. Upon getting that information did you give your consent to serve immediately, or did you still hesitate?

(Same objection.)

A. I still hesitated, and did not consent until after meeting Judge Anderson, Smith, and some others, whose names I cannot recall positively, at Somerville.

Q. Tell us the best way you can who those others were?

245 A. Mr. John Guerin was there, I think, and Mr. Bassinger; I think it was J. B. Bassinger, if my memory serves me correctly; the one long known as an engineer in this region. I don't recall any others.

Q. How were you induced to give your consent to serve?

(Objected to as immaterial and irrelevant.)

A. The assurance or promise was made that no advantage should be taken of the townships, and that the road would not be built unless there was sufficient stock taken on the line of the road by the townships through which it passed, together with the individual stock that had already been subscribed to build the road, leaving it free of debt, or its indebtedness to the stockholders.

Q. Had you any assurance relative to the payment of the interest on the bonds of the township; and, if so, what was it?

(Same objection by Mr. Pitney.)

A. We had no assurance at that time.

Q. Who were these gentlemen who gave you these promises and assurances before you gave your consent to serve?

(Same objection by Mr. Pitney.)

A. Those whom I met at Somerville, Mr. Anderson, Smith, Bassinger, acquiescing in it; I mean Colonel Smith.

Q. Was Judge Anderson at that time in any way connected with the Passaic Valley and Peapack Railroad?

A. I think he was a director.

Q. Was Mr. John H. Lyon at that time connected with the railroad company; and, if so, in what way?

A. He was connected, to the best of my knowledge and belief, as president.

Q. Was Mr. J. B. Bassinger at that time connected with the company; and, if so, in what way?

246 (Same objection.)

A. He was; as engineer, I think.

Q. Do you know whether he was or not one of the directors of the company at that time?

A. I think he was.

Q. Had Col. John Condict Smith any connection with the road at that time; and, if so, what was it?

A. I can't say positively.

Q. Where was Col. Smith then residing?

A. I don't know; I think he never lived in that township or county; not to my knowledge.

Q. What was he doing in that township?

(Same objection by Mr. Pitney.)

A. I don't know his business, except when I met him; it was all railroad.

Q. What objection did you state to those gentlemen that you had in the way of your accepting that office of commissioner?

(Same objection.)

A. I didn't feel anxious to serve; I thought a selection or choice of commissioner might be made in our part of the township better qualified for the position; another objection that I made to them at the time I was first solicited, that is to Mr. Anderson and to Mr. Lyon at the first interview, was that I thought it best for them to make a choice of one Republican to prevent it becoming a political point or theme; I had some fears as to the propriety of bonding the township, and so expressed myself.

Q. State what you said to them on that subject or point.

(Same objection.)

A. I think I can't state my language, except that I expressed a fear.

247 Q. Did you express to them what you were afraid of, or where you feared the danger lay?

A. One fear was getting in debt.

Q. Did you express that fear to them?

(Same objection.)

A. I think I said to them: If we bond and the railroad should become insolvent and be sold, that we should have nothing for our bonds.

Q. What, if anything, did they say to you touching that danger?

(Same objection.)

A. Mr. Anderson spoke very positively that the townships along the line of the road were ready to bond to build the road; nothing else occurs to me now.

Q. You say that they promised and assured you that the road would not be built unless the townships along the line of the road took enough stock, which, when added to the subscriptions of the stock made and to be made by individual subscribers, would make money enough to construct the road so there would be no debt owing for the road, except what was owing to the stockholders, or in substance such an assurance as that. Now what I want to know is, whether those assurances were given to you in answer to fears you expressed, or whether those assurances were volunteered to you without any fear or anxiety expressed by you on that point?

(Objected to on the same ground, and as leading and repetition.)

A. I hardly know how to answer the question; I think that Mr. Anderson was sincere in all the promises he made to us commissioners, and I relied largely on his judgment.

Q. You do not seem to have apprehended the point of the question; the question did not relate to anybody's sincerity, but how it come that those assurances were given to you?

248 (Question repeated.)

A. I accepted them as answers to my fears.

Q. Did you at that time say anything to those gentlemen about what the effect on the township would be if after the township had issued its bonds and taken the railroad stock the railroad company should mortgage its road and property to secure bonds of its own issuing?

A. I don't think I did.

Q. Can you tell why they assured you that there would be no debt for constructing the road, except what would be owed to the stockholders on their stock?

(Same objection.)

A. I can't tell why they told me so; perhaps I should add that Col. Smith told me that estimates had been made of building the road, and that when the townships bonded it would furnish money sufficient, with what stock had already been taken by individuals, and would be taken, to build the road.

Q. Do you recollect what day it was that you were with these gentlemen?

A. I do not; I think it was the day our commission was deposited with the clerk; that is, our appointment by the judge; I should think it was not the day we made our bond; I am not positive.

Q. Did the judge appoint the commissioners at some other place than Somerville?

A. I don't know where he made the appointment; but I understood that it had been made here at Morristown; I think I took my official oath that day at Somerville; I do not remember before what officer.

Q. About what time did you commence acting as commissioner, as near as you can tell?

A. I can't give dates; I should think it was some time in eighteen hundred and sixty-eight; may be in eighteen hundred and sixty-nine; I am not certain.

Q. Was there a particular district assigned to you in which to solicit signers to the consent paper, and, if so, what were the boundaries of that district?

249 A. A district was assigned me, with a list of tax-payers, embracing the south part of the township.

Q. Did the other commissioners visit or solicit subscribers in that district?

A. Not to my knowledge.

Q. About how long after your appointment and acceptance did you commence to solicit signers?

A. Shortly afterward; within a few weeks.

Q. Did you that year go to all the tax-payers in your district?

A. I did not at that time.

Q. Before you issued any bonds did you go to all the tax-payers in your district?

(Objected to as immaterial.)

A. I think some were signed before we went to all.

Q. Why did you not go to all the tax-payers in your district before you issued any bonds?

(Objected to as immaterial and as irrelevant.)

A. I was told that it wasn't necessary to get the consent of any tax-payers except those who owned real estate.

Q. Did you go only to owners of real estate?

A. The first time I went only to those owning or holding real estate.

Q. How did you get the idea that you were to get the consent of nobody but owners of real estate?

(Objected to as irrelevant.)

A. I got the idea through Mr. Anderson, and that was my version or understanding perhaps of the act.

Q. Did you confer with anybody except Judge Anderson on that question? And, if anybody else, with whom?

(Same objection.)

250 A. I counseled with no one but Judge Anderson, but talked with some on the subject; people who were tax-payers in the township, and people of good judgment in my own neighborhood.

Q. Did the commissioners, while they were getting these consents, and before they issued the bonds, and while they were issuing them, have any counsellor at law to advise with and assist them in the performance of their official duties; and, if so, who was it?

A. I think not; I knew of none.

Q. I see by the certified copy of your affidavit that you swore to the list of consents which you first obtained on the nineteenth of December, eighteen hundred and sixty-eight, and then I see that you swore to a second list of consents on the thirty-first day of August, eighteen hundred and sixty-nine; assuming the dates given on the record to be correct, please explain why it was that so long an interval elapsed between your getting and filing the first consents and the getting and filing the second consents.

A. We solicited first only those who were real estate owners; afterward Mr. Anderson gave me another list of tax-payers in my district who did not own real estate and requested me to see them or obtain their signatures.

Q. What, in the mean time, had occurred to induce you commissioners to seek to obtain the consents of tax-payers who were not land owners?

(Objected to on same ground.)

A. My opinion is that they had by some means, I don't know by what means or authority, obtained information that a majority of all the tax-payers was necessary or required.

Q. At the time the getting of the second list of consents was commenced was it known or admitted that the people who had signed the first lists of consents did not constitute a majority of all the tax-payers of the township?

A. It was known that they did not comprise a majority.

Q. Did anybody pretend that the first lists comprised a majority of all the tax-payers in the township?

251 A. No, sir.

Q. In obtaining the signatures to the first lists of consents, did you give any representations or assurances to those who signed that consent list at your request as to what the township would be liable for and what they would not be liable for, and what they would be required to pay and what they would not be required to pay; and, if you did, what were they?

(Objected to as immaterial and irrelevant.)

A. I used only such assurances as inducements as had been given me as above stated.

Q. Just repeat now the assurances which you gave these tax-payers who signed at your request?

(Same objection.)

A. I gave them the assurances which had been given me; that the townships on the line of the road they thought were ready to bond, thereby building the road, and the townships owning it when completed, or controlling it.

Q. What, if anything, did you assure those people about the payment of the interest on those town bonds?

(Same objection.)

A. I recollect of saying to them that the act to bond allowed the commissioners to make an arrangement with the railroad company to pay the interest on the bonds for three years, or till the road was completed and earned money enough to pay the interest on the bonds.

Q. What, if anything, did you promise them the railroad company would do about paying the interest on these particular bonds?

(Objected to on same ground.)

A. I stated to them that that was my view, and that I would carry it out as far as I could.

252 Q. What, if anything, did you state to them as to whether the township would ever be required to raise money by tax to pay the principal of these bonds?

(Same objection.)

A. I gave no assurance.

Q. Did you say anything on that subject; and, if so, what did you say?

(Same objection.)

A. I have nothing definite in my mind that I could repeat.

Q. In the year eighteen hundred and seventy-three or eighteen hundred dred and seventy-four did you write a letter to any person, in which you stated the pledges and assurances which the commissioners, or you as one of the commissioners, had made to the tax-payers of Bernards Township, to obtain their signatures to those consents?

(Objected to as attempting to elicit an immaterial fact, to prove the contents of a written instrument without producing it or accounting for its absence, and an improper and unlawful mode of prompting his own witness on the stand.)

A. I did in eighteen hundred and seventy-two or eighteen hundred and seventy-three, I am not sure which; in eighteen hundred and seventy-two, I think.

Q. To whom was that letter written?

A. To Judge Packer, of Pennsylvania.

Q. Have you that letter in your possession?

A. I have a copy of it; the letter I sent him, and I kept the copy; the one I sent to Judge Packer I wrote myself; the copy which I have I think my niece made; she wrote it as I read it to her, and then we compared the copies to see that they were alike.

Q. Will you produce the copy which you retained?

A. I now produce it.

253 (Marked "Exhibit B 3," on part of defendants.)

(Mr. Pitney objects to the admission of this exhibit in evidence, because irrelevant and immaterial and hearsay.)

This examination was adjourned by consent of counsel to to-morrow, the fourteenth inst., to take place at my office, at nine o'clock in the forenoon.

G. W. JENKINS,
Special Examiner.

Pursuant to adjournment, this examination was resumed this fourteenth day of August, eighteen hundred and seventy-eight, in the presence of Mr. Vanatta, counsel for defendants, and Mr. Pitney, counsel for complainant.

Examination of Oliver R. Stelle continued by Mr. VANATTA:

Q. In this letter to Judge Packer you say that very many who signed for the bonding of the township do feel that their signatures were obtained through false representations, not to say fraudulent means; then the letter continues in these words: "I will now name but two to explain the above; I worked faithfully for the bonding of Bernards, upon the ground that none should be bonded unless all the townships along the line of the road complied, thereby securing stock enough to build said road; and second, as I intimated the road was to be built by stock and no R. R. bonds hanging upon us, when completed." Did you in point of fact make such representations to the persons who, on your application, signed the consents?

(Objected to as leading, immaterial, irrelevant, and as an highly improper mode of examining his own witness by prompting him while on the stand.)

A. I did.

Q. Did Judge Packer answer this letter which you sent to him?

254 A. No, sir; or, if so, I never received his answer.

Q. Did he do the things or any of the things requested of him by this letter?

(Objected to, because it doesn't appear what was asked of him, and because the letter is not in evidence.)

A. He did not.

Q. Did the commissioners, in eighteen hundred and sixty-eight or eighteen hundred and sixty-nine, or at any time, borrow any money on the faith or credit of the township of Bernards, to be invested in the stock of the Passaic Valley and Peapack Railroad Company, or for any other purpose?

A. I didn't borrow, and didn't attempt to borrow any, and I never heard of the other commissioners doing so.

Q. Did the commissioners, or any of them, advertise for a loan or loans of money to be made to them on the security of bonds in the name of the township, to be made and issued by the commissioners?

A. Not that I am aware of; I did not.

Q. Did the commissioners sell any of the bonds which they signed, for money, or try to do so?

A. No, sir.

Q. Did the commissioners or any of them, so far as you know, or heard, make any effort whatever to borrow any money on those bonds?

A. They did not.

Q. What is your judgment and belief as to whether you could have borrowed money on those bonds at par?

(Objected to as immaterial and irrelevant.)

A. The borrowing of such money, or the securing of such loans, is out of my line of business, but I do not know where we could have borrowed or sold them at their face value.

Q. Did anybody offer to you, or so far as you know, to any of the commissioners, to lend money, I mean cash, and take those bonds for the loan at par?

A. Not so far as I know.

255 Q. Give such reason or reasons as you can why the commissioners did not try, by advertising or other suitable means, to borrow cash on those bonds at par.

(Objected to as irrelevant and immaterial.)

A. Mr. Anderson, one of the commissioners for Bernards, said that it was not necessary to sell or borrow upon the bonds; that the bonds could be used with the railroad company to pay for our railroad stock, and he thought that was the understanding, or would answer the point in the law, or act, rather.

Q. Did you find in the act any authority to exchange the bonds you were authorized to make on the consent given with the railroad company for its stock, upon which nothing at all had been paid at par?

A. I read the act, never took any legal counsel, and relied on the judgment of Mr. Anderson.

Q. Did you tell him that you doubted the power or the right of the commissioners to exchange those bonds for the stock of that railroad company at par?

(Same objection.)

A. I recollect of conversing with him on the subject; saying to him

that some of my neighbors had told me that they thought we were going beyond our power, and asked him if he was quite certain that we were moving correctly; he said that he thought we were, as he understood the law or act.

Q. Did you commissioners make an agreement with the railroad company to give them all the bonds you were going to issue in exchange for their stock, trading the bonds for the stock at an even value?

(Objected to as leading, immaterial, and irrelevant.)

A. We did; we traded or exchanged at even value.

Q. About when was that agreement made, as near as you can tell?

256 A. I have no date in my mind; I should think it was in eighteen hundred and sixty-eight or eighteen hundred and sixty-nine; I am not certain.

Q. Was it before or after you made your first affidavit to the consents?

A. I can't answer definitely; I have a strong impression that it was between the first and second application for consents.

Q. At the time you made that agreement with the railroad company to trade the bonds for the stock did you make any agreement with the railroad company as to the payment of the interest on the bonds; and, if so, what was it?

(Same objection by Mr. Pitney.)

A. There was an agreement that they were to pay the interest on the town bonds for three years; it was a verbal agreement.

Q. Who made the agreement on the part of the railroad company?

A. Mr. Anderson, Mr. Bassinger—that is J. B. Bassinger—Mr. John H. Lyon; that is all that I have in my mind; there might have been others; I don't recollect.

Witness (being shown a paper purporting to be a notice from the commissioners to the township committee of Bernards Township, dated fifteenth of April, eighteen hundred and seventy-two) is asked: In whose handwriting is that paper?

A. The heading, I should think, but I can't swear, is in John H. Anderson's handwriting.

Q. In whose handwriting are the signatures to that notice?

A. John H. Anderson's, John Guerin's, and Oliver R. Stelle's; my name is signed in my own proper handwriting, and the report, the body of the paper, is in my handwriting also.

Q. Was that notice or paper served on the township committee?

257 (Same objection.)

A. It was.

Q. Are the facts stated in that notice true or otherwise?

(Objected to as an improper mode of examination. It does not appear whether the facts in it are material facts or not; and if they are material, they must be elicited in the ordinary way.)

A. To the best of my knowledge, they are true.

(Paper offered as an exhibit, and marked "Exhibit B 4," on part of defendants, The Inhabitants of the Township of Bernards.)

Q. Did you, in company with Commissioners Anderson and Guerin, sign papers called bonds. By company I don't mean that you were all at the

same place at the same time, but whether you joined your signature with theirs to papers called bonds?

A. I did join my name with theirs in signing the bonds.

Q. On how many occasions did you engage in signing such papers.

A. Three.

Q. When and where did you do that on the first occasion?

A. The first occasion of my signing was at my own house. Mr. Guerin brought some bonds there, requesting me to sign. I think they were signed by Anderson and Guerin when they came to my house. I cannot fix the date of this positively, but know that it was soon after we finished up our work of bonding.

Q. What do you mean by the expression "finished up our work of bonding?"

A. Securing signers to the consents to the bonding, and giving our bond.

Q. State, as well as you can remember it, what amount of bonds were brought to you for your signature in this first instance—I mean the amount brought to you signed by Anderson and Guerin?

258 A. I think it was to the amount of the first and second instalments on our stock; and, if so, it would amount to twenty-four or twenty-five thousand dollars.

Q. On what day of the week did Mr. Guerin deliver them to you?

A. It was Saturday evening.

Q. What, if anything, did he ask you to do with them?

(Same objection.)

A. On that occasion I was only requested to sign them; and he took the bonds with him that same evening.

Q. Did you ever see them after that?

A. I did not.

Witness (being shown a paper purporting to be a receipt from the treasurer of the railroad company to the commissioners, dated January sixteenth, eighteen hundred and sixty-nine) is asked:

Q. Are you acquainted with the signature signed to that receipt; and, if so, whose is it?

A. I think it is Daniel D. Craig's signature.

(Paper offered as an exhibit, and marked "Exhibit B 5," on part of defendants.)

Q. When, if at all, did you first see that paper before to-day?

A. The first recollection I have of ever having seen it is yesterday.

Q. Did Mr. Guerin give you any reason why he had come Saturday night to have those bonds signed immediately?

(Same objection, and also because what Mr. Guerin says is not evidence.)

A. I have no leading reason which he gave me, except that the railroad company had called for installments upon our railroad stock, and that we must sign those bonds to meet that call.

259 Q. But why do it that Saturday night? What was his haste? That is the explanation I want to get.

(Same objection.)

A. I think he stated that Daniel D. Craig would call, Monday morning, at his place and get them.

Witness (being shown another paper, purporting to be a receipt from the railroad company to the commissioners, dated January sixteenth, eighteen hundred and sixty-nine) is asked:

Q. Whose signature is that on this paper, if you can tell?

A. To the best of my knowledge and belief it is also Daniel D. Craig's.

Q. When did you first see this paper?

A. Yesterday.

Q. Did you ever take any of these so-called bonds to the county clerk's office of Somerset County for registry?

A. I did not.

Q. Did you at any time have anything to do with getting these bonds registered?

A. No, sir.

Q. When those bonds were delivered over to Mr. Craig, treasurer of the railroad company, had any of them been registered?

A. I think none of the bonds were registered until after they were signed, so far as I know.

Q. Were any of them registered before the commissioners delivered them over into the possession of Mr. Craig?

A. I couldn't answer that question positively; I never, as commissioner, delivered any over personally to Mr. Craig.

Q. Who made the actual delivery of the bonds to Mr. Craig?

A. I suppose, in regard to the first lot which were signed, Mr.
260 Guerin delivered them to Mr. Craig. The others, I think, were delivered by Mr. Anderson. I am not positive who delivered them.

Q. When was the second occasion when you signed bonds of this description, or about how long after the first signing of which you have spoken?

A. I have no date in my mind. I think it was a few months afterwards.

Q. Where was that signing done?

A. At John Guerin's house.

Q. Who were there, assisting in it, or as witnesses of your proceedings?

A. I cannot say; the commissioners were all there; there were others there, but I couldn't be positive who they were.

Q. What amount about were signed on that occasion?

A. I can't give any definite amount; I think the second batch was not more than the first; perhaps not half the first lot; I have it in my mind that the signing of the second lot was to meet another installment which the company had called for.

Q. What percentage of the whole were those installments?

A. One-tenth.

Q. And how frequently were those installments payable?

A. Subject to the call of the railroad company.

Q. Do you mean that they could all be called for at once?

A. No, sir; I mean to say that it was the installment, the one individual installment that was called for; they could not be all called for at one time; that is, the stock could not be all called for at one time; that is, the payment of the stock, I mean.

Q. How often could payments of the stock be called for?

A. To be positive I would rather refer to the act; but my impression is that they could be called for every thirty days.

Q. What was done with the second lot of bonds you signed?

261 A. I cannot say; I signed them at Mr. Guerin's and left, taking none of the bonds with me.

Q. To what use did you understand, at the time you signed those bonds, that they were to be put?

(Same objection.)

A. I understood at the time that they were to be put in the hands of the railroad treasurer, to pay another or other installments upon our stock—township stock.

Q. Who was to make that delivery of the bonds to the treasurer?

A. I cannot state who was to deliver them to the treasurer.

Q. Do you mean that you signed them, and went off and left them without knowing what use was to be made of them, or what was to be done with them?

(Same objection, and as an improper mode of examining his own witness.)

A. I thought I stated what my understanding was as to what was to be done with them, and how they were to be used.

Q. What I want to know is, who was to apply them to that use; that is, who was to deliver them to the treasurer, as you understood it?

A. I have no doubt but that I did understand, and that I knew which of the commissioners was to hand them over to the treasurer, but I cannot now say which.

Q. When did you sign the last time?

A. The same answer as before; I have no date, but can only approximate; a few months after signing the second.

Q. How many were signed on that occasion?

A. The balance of the bonds.

Q. Where was it done?

A. At Morristown.

Q. What place at Morristown?

A. I think they were signed at the hotel above here.

Q. Who were present at the time it was done?

262 A. The commissioners, Mr. Bassinger; Mr. Craig was there part of the time—Daniel D. Craig; that is all that I recollect positively.

Q. What was the amount signed on that occasion, as near as you can recollect?

A. I should think, to the best of my knowledge, seventy thousand dollars—from seventy to eighty thousand dollars—it might have been more, and it might have been less.

Q. Was there any memorandum or record kept as to how many were signed on these various occasions?

A. My impression is that Mr. Anderson had a record; I don't know where it is now; I never kept any myself.

Q. After you signed this last lot, which, if any, of the commissioners took them away from Morristown when you left that day?

A. I did not take any, and I think neither of the other commissioners did.

Q. What was done with them?

A. They were to be left in trust with Daniel D. Craig.

Q. What was the trust?

A. To hold them in his safe-keeping, and to pay out and use the bonds as other calls were made for installments by the railroad company.

Q. Did he give any receipt for them?

A. I suppose he did; but I never saw any.

Q. Why do you think that he gave one?

A. I feel quite sure that Judge Anderson passed the bonds over to the treasurer, and that he would take a receipt upon so doing.

Q. Did you at any time after that sign any order or direction to the treasurer to pay out or deliver those bonds?

A. I did not.

Q. Did you give any verbal directions to the treasurer, or anybody else, to pay out or pass out any of those bonds?

A. I have no recollection of ever having given such direction.

Q. Do you know now, or did you ever know, when those bonds were passed out, or to whom they were passed out?

A. I have no knowledge when they were passed, or to whom, except that I suppose they went to the railway.

263 Q. When you and your fellow commissioners left that last batch of bonds with Mr. Craig, had any of them been registered?

A. I think not.

Q. Was there any arrangement, then and there, made for having them registered and, if so, what was it, and with whom was it made?

A. No arrangement made that I know of.

(Mr. Vanatta offers the paper last shown witness as an exhibit, marked "Exhibit B 6," on part of defendants, the Inhabitants of the Township of Bernards.)

Witness (being shown Exhibit B 2) is asked:

Q. Did you see any publication in the papers of the county of Somerset, of that notice, or one in substance like it; and, if so, what papers?

(Same objection.)

A. I saw a notice in the Somerset Messenger; just such a notice as this, with a list of names attached, but can't swear that these are names that I saw.

Q. Did you know at the time you solicited subscriptions to the first set of consent papers, that the Passaic Valley and Peapack Railroad Company had no authority to mortgage its franchises?

A. I did not know it.

Q. When you solicited signatures to the second set, did you know that in March, eighteen hundred and sixty-nine, the railroad company had obtained the power, by an act of the legislature, to mortgage their franchise and property, powers and privileges, to the extent of three millions of dollars?

A. I knew of that act as soon as it passed.

Q. When you solicited signatures to the second consent papers, did you inform the persons whose signatures you solicited that since the first consent papers had been signed this power to mortgage had been vested in the railroad company?

264 A. I think I never presented that to the people whom I solicited

to sign; my second solicit for signers led me to those who were not real estate owners, and that was a class of persons who cared but little for the future tax and the future result.

Q. Mr. Stelle, if in the summer of eighteen hundred and sixty-nine, you had gone back to the land owners who had signed their consent to this bonding in eighteen hundred and sixty-eight, and had shown them this act, authorizing the railroad company to mortgage to the extent of three millions of dollars, and asked them to give their consent anew, or to confirm the consent they had given the year before, do you think they would have done it?

(Objected to, because the opinion of the witness on that subject is not competent evidence.)

A. My impression is that they would not.

Q. Under that altered condition of circumstances, would you have renewed your own consent?

(Same objection, and because immaterial and irrelevant.)

A. I would not.

Cross-examination by Mr. PITNEY:

Q. At the time you accepted the appointment, you knew and understood, did you not, that large subscriptions by individuals to the stock of the road had been made?

A. I knew that subscriptions had been made.

Q. And that it was intended to solicit farther subscriptions, didn't you?

A. Yes.

Q. Was any book of subscriptions exhibited to you?

A. I took some stock in the road when the books first opened—a small amount; that is all the stock-book ever presented to me, and perhaps the stock-book when we signed for stock for the township; I think it was.

265 Q. Please to look at the book now shown, with the letter R written on the inside of the cover, and see whether you recognize it.

A. I think I have seen this book before.

(Marked "Exhibit C 56," on part of complainant.)

Q. Look over the names and see whether you recognize them as residents along the line of the railroad.

A. I recognize them as such.

Q. Do you know the handwriting of any of them?

A. There is one name here that I recognize; I can feel very positive that it is his signature.

Q. Now, look at this book with the letter W written on the first page, and see whether you recognize the names signed to that.

A. I recognize the persons whose names are signed here; perhaps most of them lived along the road at that time.

Q. Do you recognize any of the handwriting?

A. There are some which I should take to be the signatures of those persons.

(Book marked "Exhibit C 57," on part of complainant.)

Q. Now look at the first subscription book shown you (Exhibit C 56,) at the last pages written on, and see whether you recognize those subscriptions by the several township commissioners.

A. I recognize my own signature here, and that of Judge Anderson.

Q. Do you recognize those of the townships of New Providence and Springfield?

A. I do not.

Q. Those of the township of Bedminster?

A. I don't recognize these; I should think that was Morris P. Crater's signature, if I have his signature in my mind.

Q. You and the other commissioners were all sworn into office at the same time, were you not, at Somerville?

A. I think we were.

266 Q. At that time the policy of the management of the railroad was talked over, wasn't it?

A. To some extent.

Q. And that policy was said to be to build the road on the stock subscription, was it not?

A. It was.

Q. Is or is not that what you meant to say and express by what you said on your direct examination?

A. I don't know that I have anything to add to my direct examination on that point.

Q. Were you present when the commissioners of New Providence, the commissioners of Springfield, and the commissioners of Bedminster Townships subscribed to the stock?

A. I have no recollection of it.

Q. You knew, did you not, that efforts had been made, and were being made to have the stock subscribed, when you were sworn into office?

A. I knew that efforts were being made to increase the stock, as I understand the phraseology of the question; I can't answer it any differently.

Q. Had not a large amount of individual subscriptions to the stock been made when you were sworn into office?

A. I think but a small amount had been subscribed for, compared with the amount necessary to build the road.

Q. Had there not been any considerable subscriptions made in eighteen hundred and sixty-six?

A. I think there had.

Q. Look at this certificate-book now shown, with the letter T marked on the inside of the cover, and see if you recognize in whose handwriting those certificates are filled up, and by whom they are signed.

Witness (examining book) says:

A. They are filled up by the treasurer, Morris C. Crater, and John H. Anderson, president, that is signed by them; I should think they were filled up by John H. Anderson as well as signed by him.

267 Q. In your direct examination, in explaining why a second set of consent papers were obtained, you stated, "my opinion is that they had by some means, I don't know by what means and authority, obtained information that a majority of all the tax-payers was necessary or required;" look at paragraph seven (page forty of print) of your answer herein, and see whether that refreshes your memory.

A. It does refresh my memory some; I knew that Mr. Anderson informed me of the fact, but had forgotten his authority.

Q. Did you not understand and know that the chancellor of the State of New Jersey had forbidden the Bedminster commissioners to issue bonds, because a majority of all the tax-payers had not consented?

A. I know that I did not know it until a long time after he had issued an injunction, nor hear of it.

Q. You had heard of it, hadn't you, before you started to get the second consent papers?

A. I am quite positive that I had not.

Q. Why did you then so state, in substance, in your answer herein?

A. My associate commissioner may have been clearer on that point than I, and his statement taken as our statement.

Q. Did you, in procuring signatures to these consent papers, state anything else to the subscribers than that it was expected, or hoped, or believed that all the townships would bond and take stock; I mean anything more on that particular point?

A. I stated that it was expected that they would all bond and take stock.

Q. That was true, wasn't it?

A. Yes, that was my expectation; that they would bond and take stock.

Q. With regard to the building the road out of stock subscriptions, did you state to them any more than that it was the policy, intention, and expectation that the road would be built by stock subscriptions without incurring any indebtedness?

268 A. I stated to them that that was my position as commissioner; that I thought I had a pledge or promise, giving who the authors were, that the road would be built by stock, and unless a sufficient amount of stock was secured to build the road, that the road would not be built; that is as near as I can repeat what I went before the people with.

Q. Do you know whether any difficulty was met with in collecting the subscriptions of stock that had been made by individuals?

A. I know that there were but few who paid their stock in full; the number that did is very small.

Q. Do you know whether, if those who had subscribed, had paid, there would have been enough to build the road?

A. I should think not, from the fact that one of the townships through which it passed did not bond; the township of Passaic, in Morris County, did not bond.

Q. If the township of Passaic had bonded, would there have been enough subscriptions of stock to build the road according to the estimates you had of its cost?

A. I can't say.

Q. You took some interest in the progress of the building of the road, didn't you?

A. I felt interested in the building of the road.

Q. Watched its progress?

A. I observed its progress.

Q. Did you attend meetings of the stockholders?

A. I attended their annual meeting.

Q. How often?

A. Once a year.

Q. Did you vote at those meetings on behalf of the township?

A. I think I did.

Q. Have you a certificate of stock of the township in your possession?

A. I have.

Q. For how many shares of stock?

A. I can't say positively how many shares of stock; I have it with me, and now produce it.

269 (Mr. Pitney offers in evidence these certificates, numbers 96 and 107—one for twenty-four hundred shares and one for fifty-two shares.

(Marked exhibits "C 58" and "C 59" on part of complainant.)

Q. What has become of the balance of the shares originally issued?

A. They have been exchanged with Benjamin F. Beekman, of New York, for a like amount of town bonds—Bernards Township bonds.

Q. Was that done under the agreement set out in your answer, paragraph eighteen (pages 44 to 46 of the print)?

A. It was done under that agreement.

Q. Have you that agreement made with Mr. Beekman?

A. Not in my possession; I think I left it with Mr. Vanatta.

(Mr. Vanatta is asked by Mr. Pitney to produce it.

It is produced and offered in evidence and marked "Exhibit C 60," on part of complainant.

The paper now produced and marked "Exhibit C 60," Mr. Vanatta says, is the one copied into the answers of Stelle and Guerin, in this cause.

This paper objected to by Mr. Vanatta as not competent evidence against the township.)

Q. Look at this book of certificates of stock of the Passaic Valley and Peapack Railroad Company (marked "Exhibit C 54"), at certificate No. 32, and see if that is your handwriting on the back of that.

A. I think that is my hand.

Q. At the time you made the agreement with Mr. Beekman, who was president of the West Line road?

A. The agreement with Mr. Beekman was made just previous

270 to the annual election of officers, and Mr. Asa Packer (Judge Packer) was president of the road at that time.

Q. Who was Judge Packer?

A. He is said to be a Pennsylvania man, largely interested in railroads, I suppose he is or was president of the Lehigh Valley road.

Q. While he was president, was or was not a majority of the directors of the West Line road his friends and persons interested in the Lehigh Valley Railroad?

(Objected to as irrelevant and only capable of a hearsay answer.)

A. I don't know how many of them were interested in the Lehigh Railroad. Mr. Sayre was said to be the engineer of the Lehigh Valley road.

Q. Was or was not Thomas N. McCarter secretary of the West Line road under Packer's management?

A. My impression is that he was.

Q. Was he not at the same time a director of the Lehigh Valley road?

A. I can't answer that.

Q. While Mr. Packer was president of the road, were not the books kept in Philadelphia?

A. I can't say.

Q. What was the object of Mr. Beekman's making that arrangement with you, as you understood it?

A. The object, as I understood it, was that Mr. Beckman thought he could facilitate the building of the road more rapidly than Mr. Packer was doing it, and at the same time could give the townships better protection than any they had received from Packer or any other source.

Q. How was Mr. Beckman to accomplish that?

(Objected to as irrelevant.)

A. By pushing the work more rapidly on.

Q. How long a time did Mr. Packer have control of the road?

A. One year.

271 Q. Was he at that time engaged in building and extending the road from Summit toward Newark?

(Objected to as irrelevant.)

A. Very slowly.

Q. Do you know how much Mr. Packer spent on the road?

A. I can't say positively.

Q. Do not the books show that he spent one hundred and forty thousand dollars upon it?

A. Perhaps the books may show that there was that amount spent.

Q. Was the result of Mr. Beckman's agreement made with you, that Mr. Beckman voted out some of Judge Packer's directors and voted in others of his own?

(Objected to as irrelevant.)

A. I think that was the result at the next election.

Q. Do you recollect the names of the new directors that Mr. Beckman voted in?

A. I recollect some of them; Mr. Beckman was one; Larned, Ferguson, I think, and myself were others; and I am not sure but one or two of the commissioners of New Providence were also directors; I think Mr. Bonnel, one of the New Providence commissioners, was one.

Q. These whom you have just named were supposed to be friendly to Mr. Beckman's management of the road, weren't they?

A. Yes, so far as I know.

Q. When, according to your recollection, was that change made?

A. About the first of June, eighteen hundred and seventy-two.

Q. Do you recollect who the directors were who were susperseded by those you have just mentioned?

A. Judge Packer, Robert Sayre, a gentleman by the name of Hartshorn, John H. Lyon, Mr. Bassinger, I think, and myself; I was in Judge Packer's direction.

272 Q. How long were you a director in the railroad, Mr. Stelle?

A. I think I was elected a director when Mr. Packer and friends took possession; and was re-elected with Mr. Beckman—and I think the second time.

Q. Were either of the commissioners a director when you were—either Guerin or Anderson?

A. They were not.

Q. Just look at these two books now shown you, and see whether you recognize them.

Witness (after examining the books) answers:

A. I do not; I can't say that I ever saw them before; I may have seen them in the board meeting; I don't know but I have.

Q. While Judge Packer was president, where were the books kept?

A. I do not know.

Q. While he was president who furnished the money to do what work was done toward completing the road?

(Objected to as immaterial.)

A. Personally I do not know who furnished the money.

Q. Give us what information you have on the subject.

(Objected to as hearsay.)

A. My idea is that there were some railroad bonds which came into his hands which he negotiated for money.

Q. Did not the Lehigh Valley Company furnish money toward the completion of the West Line road?

A. I do not know.

Q. Do not the books show it?

A. I have not examined them.

Q. You understand that that part of the agreement with Beekman which provided that if the directors which he nominated should be elected he would indemnify the township against the bonds was fulfilled, don't you, that is to say that his nominees were elected, were they not?

273 (Objected to as irrelevant.)

A. They were.

Q. And he obtained control of the road and held it until he died, did he not?

A. I am not clear on that point; whether he held it until he died or until it went into the hands of a receiver; he held it either until he died, or until it went into the hands of the receiver; William C. Larned, one of the executors, was the receiver.

Q. Did Beekman furnish any money to complete the road?

A. I do not know.

Q. A good deal of money was spent during Beekman's administration in extending the road from Summit to Newark, wasn't there?

A. There was money spent.

Q. The road was graded, bridged, and tracked from Bernardsville to the crossing of the D., L. and W. road, about half a mile west of Summit, before Beekman took it, wasn't it?

A. I think it was before Beekman took it, and was being operated in a moderate way.

Q. From that crossing near Summit to another crossing with the D., L. and W., near Millburn, was it not substantially graded before it went into the hands of a receiver?

A. I do not know what was the condition of that section; I was never upon it.

Q. Is it not visible to the eye of the traveller on the D., L. and W. road, that a large amount of work has been done between the points just inquired about?

A. It is visible that work has been done; but I think not visible as to the amount.

Q. Did you not learn in the course of the performance of your duties as director, that several miles of right of way for the route just inquired about were secured and paid for?

(Objected to as hearsay.)

274 A. I knew that a part of the right of way was bought and paid for, but was not aware that all was.

Q. The road has been operated continuously for passengers and freight, has it not, up to within a day or two?

A. It has.

Q. What is the character of the land in the southwestern part of the township of Bernards; I mean along the line of Bridgewater and Bedminster Townships.

A. Rather mountainous land.

Q. Is it more or less sparsely inhabited than the central and eastern parts of the township?

A. I think it is not so thickly settled as those parts.

Q. The geographical centre then is not the centre of wealth and population?

A. That point referred to is a good ways below the geographical centre.

Q. Is the centre of wealth and population to the northeast of the geographical centre?

(Mr. Vanatta objects to all this evidence as to geographical points and centres, as irrelevant in this case.)

A. I can hardly tell where wealth is nowadays; there is more population there.

Q. Have you paid any attention to any changes in value of real estate in Bernards Township since the railroad was first talked of?

(Objected to.)

A. Values have fluctuated some.

Q. Comparing eighteen hundred and sixty-five, before the railroad was little more than talked of, with eighteen hundred and seventy, when it was in operation, what changes in value occurred in those five years?

(Objected to as irrelevant.)

A. I think that some property on the line of the road had increased in value, or did increase during that period referred to.

275 Q. What do you mean by "on the line of the road?"

A. I don't know any better English in which to express it; I mean lands adjoining the road; lands near by, and especially I mean that property near the depot.

Q. Was there not an increase in the market value of farms lying one, two, and three miles from any station on the road?

A. Not in that part of the township in which I was acquainted or familiar with.

Q. If there was increase, about the period inquired about, of two or three hundred thousand dollars in the assessor's valuation of real estate of Bernards Township, how do you account for that?

(Objected to because irrelevant, and because an assessor's valuation is no test of real value.)

A. I account for it that that was the assessor's idea of valuation, of valuing property; I had a farm then and I have it still, and I think the valuation hasn't been changed.

Q. Did the commissioners have any safe place to keep bonds?

A. I had no safe to keep them in.

Q. Didn't you understand when you signed the last batch of bonds, that they were all placed in Mr. Craig's hands to keep for the commissioners,

as a matter of convenience, and because he had a safe place to keep them in?

(Objected to.)

A. Not necessarily so; they were safe anywhere, I considered, until after they were signed.

Q. But after you had signed them, wasn't the safe-keeping of them a matter of some consequence?

A. Yes; after they were signed.

Q. Then was not the matter of the safe-keeping of the bonds a consideration for leaving them in Mr. Craig's care?

(Objected to.)

276 A. It was a small consideration, I suppose; my understanding of leaving them there was this: that while they would be safe to be left there, no advantage was to be taken of the fact that they were left with him, all signed and left with him, and that they were to be used subject to the call of the railroad company with as much respect as other individual stockholders were treated; that is to say, as I understood it, should the individual stockholders refuse to pay their stock, ours was not to be used for the completion of the road: that all stockholders were to be treated alike.

Q. The commissioners had already responded to calls for half or more of their stock subscription at the time this last batch of bonds was signed, hadn't they?

A. Less than half, I think.

Q. You had delivered bonds in payment of your subscription of stock, in obedience to calls of the railroad company from time to time, had you not, and the road was in process of construction, was it not, at the time you signed the last batch?

A. I think I stated that I never delivered any myself.

Q. Had not the commissioners done so then?

A. I suppose Mr. Anderson had.

Q. Do you mean to say that these bonds had been delivered to the railroad company without your consent; and, if so, which and when?

A. I do mean to say that the last batch that were signed were so delivered.

Q. Do you know where the receipt is that was taken from Mr. Craig when the last batch of bonds were given to him?

A. I never saw any receipt, except those that have been presented here, to my knowledge.

Q. Do you recollect of having a conversation with me at or near Baskingridge about these bonds, about three years ago?

A. I recollect meeting you, Mr. Pitney, there.

Q. Did you, at that time, state or pretend that any of these bonds had been given to the railroad company without your consent?

277 (Objected to.)

A. I have no recollection of that point being raised.

Q. Did not I ask you to seal those bonds?

A. You did.

Q. Did I not have a package of bonds there?

A. You had.

Q. Did you not state in substance to me, in reply to my request to seal those bonds, that the bonds had been made and issued by the commission-

ers in good faith in exchange for the stock of the railroad; that the failure to seal them was a pure oversight not thought of by anybody, and that you would be very glad to seal them if it would be proper for you to do so, but that under advice of counsel you could not do so, without the order or warrant of some court?

A. I never had sought counsel at the time of seeing Mr. Pitney. I stated to Mr. Pitney, as near as I recollect, that I could not and would not seal them without counsel, or authority requesting me to do so. I think I put it a little stronger—compelling me to do so. I stated to Mr. Pitney, too, I think, that if I sealed those bonds without being compelled to, Bernards Township would be too warm a place for me to live in. I am certain that I never said that I would gladly seal those bonds, if I could.

Q. Didn't you make use of this very expression: "That you would be very glad to be compelled to seal those bonds," adding, in substance, that the defense of want of seals was one that ought not to be set up against them, as they were issued in good faith, and that all the formalities of the statute were intended to be complied with?

A. I think I did not.

Q. Didn't you state, in substance, to me on the occasion mentioned, that you knew of no reason why the bonds should not be paid?

(Objected to as irrelevant.)

A. I might have so said. I have no recollection of it.

278 Q. Did you state any fact or circumstance to me on that occasion, or assign any reason which would operate as a just defence on the part of the township against those bonds?

(Objected to as witness is not a proper judge of what is a proper defence for the township.)

A. I thought the only point on which I was called upon was to seal the bonds; that was the point as I understood it that day, and that I refused to do.

(Question repeated.)

(Same objection, and also on the ground that the question is already answered.)

A. I have nothing to add.

Q. When did you first have your attention called to the circumstance that the bonds had not been sealed?

A. I think it was the summer of eighteen hundred and seventy-three, if my memory serves me.

Q. Was the sealing of the bonds talked of or thought of, as far as you know, in connection with the signing and issuing of them?

A. I have no recollection of the seals ever having been talked of in any way.

Q. Were you or either of the commissioners aware, as far as you know, of any defect in the bonds, when they were delivered to the railroad company?

A. I was not aware of any.

Q. Did you intend to let them go in a defective or unfinished condition?

(Objected to as irrelevant and incompetent, being not a question of intention but of acts.)

A. I think we did not intend to cast spurious bonds upon the market, or intend to issue spurious bonds.

Q. Did you intend to issue or throw upon the market bonds that were defective in any way, or incomplete in execution, or in the formalities required for their validity?

279 (Same objection as last before stated.)

A. I think we did not.

Q. At the time those bonds were delivered to Mr. Craig, did you and the other commissioners, so far as you know, suppose that the bonds were perfect and ready to be put upon the market as soon as they were registered?

(Same objection as last before stated.)

A. I knew nothing to the contrary.

Q. I will read the twenty-fourth paragraph (or part of it) of your answer:

(The counsel reads from the thirtieth line of page 47 to eighth line of page 48, and also reads the thirtieth paragraph of the bill, as they appear in the printed book, and asks:)

Q. Is what I have read to you from your answer true?

A. I think it is substantially true.

By Mr. PITNEY. I now read from the latter part of the tenth paragraph of your answer, found on page 42 of the printed book, from line 20 to 30.

(Mr. Vanatta objects to counsel's reading a detached portion of a paragraph, but holds that he should read the whole as it stands.)

By Mr. PITNEY. I will now read the whole of it.

(Counsel reads the said tenth paragraph and asks:)

Q. Was that part of your answer true, except so far as relates to the signing of the bonds in batches, instead of all at once?

A. I think part of it is true.

Q. Isn't it all true except the matter of dates?

280 A. That is substantially true; the wording is not as I would put it; except that I never understood that the bonds were placed in Mr. Craig's hands, to be paid out by him without further instructions.

Q. Why didn't you so state in your answer?

A. I can't give any reason why I didn't so state in my answer.

Q. Did you ever state or pretend to Mr. Craig that he had delivered those bonds to the railroad company, without any proper authority, or in breach of the trust reposed in him?

A. Mr. Anderson told me that all the bonds were all used, and that was the intimation I had in regard to it, and I told Mr. Anderson that I thought that that was a breach of confidence or trust, and asked him if he didn't so understand it; I also asked him, if he understood that our bonds were to be used after other stockholders had stopped paying their subscriptions for their stock; his reply to me was, that he so understood it at the time they were given or signed, but that they could not proceed with the road without using the township bonds at once, that is to say; they were obliged to use the township bonds to keep the road progressing.

(Mr. Pitney objected to this answer while the witness was giving it, as not responsive.)

(Witness continues:) I very rarely saw Mr. Craig, but saw Mr. Anderson frequently, and through the latter I obtained most of my information.

Q. You understood, did you not, that the bonds were to be registered by somebody before they were put upon the market?

A. I think I did so understand it.

Redirect examination by Mr. VANATTA:

Q. Who wrote or drafted these bonds which we have been talking about?

A. Mr. Anderson told me that Col. Smith got up the bonds; that is all I know of it.

281 (Mr. Pitney objected to what Mr. Anderson said while witness was answering.)

Q. Did you write or in any way prepare any form of those bonds?

A. I did not.

Q. Did you give any directions to anybody about the form or the contents of those bonds, or the manner of executing them, or any of them?

A. I did not.

Q. Did Mr. John Guerin have anything to do with preparing or directing or advising as to the preparation, contents, form, or manner of executing those bonds?

(Objected to for want of knowledge in the witness.)

A. Not that I know of.

Q. Did the commissioners, so far as you know, order the printing of those bonds, or have anything to do with the printing of those bonds?

A. Not so far as I know.

Q. Can you tell where they were printed or who paid for the printing, or did you ever know?

A. I cannot tell, and think I never knew.

Q. Where and when did you first see any copy of those bonds?

A. I have no recollection of seeing any until Mr. Guerin brought some to my house to be signed, as stated in my evidence.

Q. When those bonds were first shown to you, were the signatures of Mr. Anderson and Mr. Guerin affixed to them?

A. I think I so stated in my evidence.

Q. Before you signed them, did you read them through, word by word?

A. I think I read them, Mr. Vanatta.

Q. My question is, whether you read them in the particular and careful manner indicated by the question.

A. Perhaps not as carefully as your question could imply.

282 Q. Did the presence of Judge Anderson's and Mr. Guerin's signatures to the papers when they were handed to you in any way serve to induce you to assume that they were correct without making a critical examination yourself?

A. I think the name of Judge Anderson did.

Q. Before you signed those bonds or papers, had you had any conversation with Judge Anderson as to who was to prepare the bonds which the commissioners were going to sign? And, if so, state what the conversation was.

(Objected to as hearsay.)

A. I think we never had any conversation as to who was to prepare them previous to our signing them.

Q. Do you mean that you had no conversation with him on that subject previous to your signing the first batch, or until after all had been signed?

A. I think the conversation we had was after all had been signed, to the best of recollection.

Q. State when it was and where, and what brought it about.

A. I think it was not until after it was rumored that there was no seals on the bonds; in conversation with him, (Mr. Pitney objects to this as hearsay,) at his house, I asked him who officiated in getting up the bonds; his reply was that Col. Smith had the matter of getting up the bonds in charge.

Q. Who first mentioned to you that these bonds had no seals?

(Objected to as hearsay and irrelevant.)

A. Benjamin F. Beekman.

Q. Was that before or after Mr. Beekman came into the direction of the West Line?

A. It was a few weeks after he came into the direction.

Q. You spoke in your cross-examination about there having been subscriptions to the stock of this company by individuals; what amount in money was ever paid on the stock of that class of stockholders?

283 (Objected to as immaterial, irrelevant, and for want of knowledge.)

A. So far as I know a very small amount; I never paid up my own from the fact that I found others were not.

Q. Did the moneys paid by that class of stockholders on account of their stocks aggregate as much as thirty thousand dollars?

(Same objection.)

A. I can't say as to that.

Q. Who were the largest holders of stock outside of the township corporations?

(Objected to as not a proper mode of proving that fact, and as irrelevant.)

A. John H. Lyon was a large stockholder; J. B. Bassinger was another, and some of their friends whom I do not know; I don't recollect as to Col. Smith.

OLIVER R. STELLE.

Sworn to and subscribed before me, at Morris-town, this fourteenth day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

This examination was then adjourned by consent of counsel to Wednesday, the twenty-eighth day of August, inst., to take place at half past nine o'clock in the forenoon, at my office.

G. W. JENKINS,
Special Examiner.

Pursuant to adjournment, this examination was continued this twenty-eighth day of August, eighteen hundred and seventy-eight, at my
284 office, in the presence of Jacob Vanatta, esq., counsel for defendants, and H. C. Pitney, esq., counsel for complainant.

GEORGE W. JENKINS,
Special Examiner.

JOHN GUERIN, a witness produced on part of defendants, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am sixty-seven years of age; I reside in Baskingridge, in Bernards Township; I am a farmer; I was one of the commissioners to bond the township of Bernards for stock in the Passaic Valley and Peapack Railroad Company.

Q. Tell us as well you can how you came to be appointed on that commission; what, if anything, you did to get the appointment.

(Objected to by Mr. Pitney as immaterial and irrelevant.)

A. I don't know that I can tell you the particulars; I was called upon by some one to act as one; I went to see Judge Anderson about it, and I objected first to act as one; through his persuasion I gave my consent.

Q. Who first asked you to serve or act as commissioner; I mean before you went to see Judge Anderson?

(Same objection by Mr. Pitney.)

A. I couldn't say.

Q. Was it anybody connected with that railroad company?

(Same objection by Mr. Pitney.)

A. I couldn't say about that; it might have been Judge Anderson himself.

Q. Did you have this interview with Judge Anderson before the judge appointed you or after he announced the appointment?

A. I think it was before.

285 Q. What objections to serving did you state to Judge Anderson?

A. Well, I can't tell you all that; my objections to serving, I think, was that I didn't want to do it.

(Same objection.)

Q. State as well as you can why you didn't want to do it; whether it was owing to your being doubtful about the propriety of bonding the town, or whether your other business was in the way.

(Objected to by Mr. Pitney on same ground.)

A. It was both.

Q. State as well you can what objections to bonding the town you stated to Judge Anderson.

A. I couldn't say in particular about that, for I can't remember; I objected to it because, as I have stated before, I was feared of bonding, and I hadn't the time to attend to it.

Q. Did what Judge Anderson said to you remove your fears about bonding the township?

(Objected to on same ground.)

A. I suppose it did, or I wouldn't have consented to do it.

Q. Can you remember what your fears were, that is, in what way did you fear the township might be injured?

(Same objection by Mr. Pitney.)

A. I was feared things wasn't all right, that there might be trouble about it.

Q. Do you know who circulated for signatures the petition to Judge Dalrimple praying for the appointment of commissioners?

A. I do not.

Q. Did you see that petition at the time of your appointment, or prior to your appointment?

286 A. I don't recollect of ever having seen it.

Q. Where were you sworn in as commissioner?

A. I believe at Somerville; I went down there; I can't tell who I met there; I suppose I met the other two commissioners, but who else I can't say.

Q. Do you remember any of the officers of the railroad being there in conference or conversation with Mr. Stelle, Mr. Anderson, or yourself on that occasion?

A. I can't remember any particular one being there.

Q. Did you have any particular district in which to get the signatures of the tax-payers to the consents for issuing bonds?

A. I had; well I don't know that I could describe my district; I took the centre of the township—a streak right across it; it was directly after I was sworn in that I began getting the signatures to the consent papers.

Q. What class of people did you go to for signatures in your district in that year, eighteen hundred and sixty-eight?

A. Real estate owners.

Q. Did you that year ask the signatures to the consent of any tax-payer who was not also a land owner?

A. I did not, the first time I went over the district.

Q. Did you get to the consent the signature of any tax-payer who was not an owner of land in that township that year?

A. I don't know as I did; I didn't intend to.

Q. Why did you confine the signing of the consent to tax-payers who were land owners and exclude all who were tax-payers but not land owners?

A. Well, I can explain that to you: there was a list of names taken from the duplicate and given to me to go to, said to be all freeholders—real estate holders; I went to them and no others.

Q. Who gave you that list of land owners or freeholders?

A. I think it was Judge Anderson; it was his handwriting; I do know where that list is now; I haven't it with me; I thought of fetching it, but I forgot it this morning.

287 Q. Did you ask the judge, or have any conversation with him, as to whether the signatures of persons who were not land-owners but who were tax-payers should be gotten?

(Objected to by Mr. Pitney as irrelevant, immaterial, and hearsay.)

A. I couldn't say as to that; probably I did; but that was the impression of myself and others, that we didn't require any others than the real estate owners.

Q. Did you see the list of consents that Judge Anderson obtained before you issued any bonds at all?

(Same objection.)

A. I think it is likely I seen it.

Q. You knew, did you not, how many names were on it?

A. I knew at the time.

Q. Did you not know how many signatures there were to the consents you had offered to land-owners?

A. I knew at the time.

Q. Did you know how many signatures there were to Mr. Stelle's consent papers?

A. I believe I knew that at the time.

Q. Did you or not know at that time that all of the signatures to consents put together were not a majority of all the tax-payers in that township, in the year eighteen hundred and sixty-seven or eighteen hundred and sixty-eight?

(Same objection by Mr. Pitney.)

A. I suppose I knew it.

Q. Have you any doubt about it?

A. No, I haven't any doubts about it.

Q. Did you or not proceed in getting the consents, and in making the bonds and in giving them over to Mr. Craig, upon the idea that
288 tax-payers who were not land-owners in that township had no voice or say in the matter?

(Same objection by Mr. Pitney, and as leading.)

A. That is what I understood; that is the way I went to work, of course.

Q. Did you continue on in that idea until after the bonds were made?

(Same objection.)

A. I did—that is until the first ones were made.

Q. Did you or any of the commissioners sign a single one of those bonds after you had obtained the second or last lot of consent papers and filed them; or, in other words, were not all of those bonds signed and out of the commissioners' hands before the last consent papers were filed in the clerk's office?

A. I don't know how to answer that question.

Q. On how many different occasions, if more than one, did commissioners sign town bonds?

A. I think three times.

Q. When and where was the first time?

A. I can't say when; the first time was up here at Guerin's Hotel.

Q. About what amount of bonds were signed on that occasion?

A. I can't tell; my impression is twenty-four or twenty-five thousand; those receipts will show it.

Q. Who signed the bonds at Guerin's Hotel on that occasion?

A. Judge Anderson and myself.

Q. Who besides you and he were at the hotel on that occasion?

A. I can't tell; I think the directors were there, and some of the other commissioners; I think the Bedminster commissioners were there; Mr. Stelle was not there; I think Mr. Daniel D. Craig was there; I think it was on Saturday.

289 Q. What was done with the bonds which you and Judge Anderson signed on that day?

A. They were given to me by Mr. Craig to take down home with me, and to take to Mr. Stelle to sign.

Q. Before you went to Mr. Stelle that day did you receive any receipt from Mr. Craig for those bonds?

A. I think I did.

Q. Where did he give it to you?

A. I think it was here at the hotel.

Q. Before Mr. Stelle had signed the bonds?

A. Yes, sir.

Q. Did he give you one or two receipts, or how many?

A. I can't tell that, but I suppose he only gave me one at that time.

Q. Did the receipts he gave you amount to as much as the bonds you signed that day amounted to?

A. I think so.

Q. When you got those bonds to take them to Mr. Stelle for his signature what was the next thing you did with them?

A. I took them there and got his name.

Q. In the daytime or in the night?

A. I believe it was at night.

Q. When Mr. Stelle had signed them what next was done with them?

A. I took them home with me; kept them until Monday morning; gave them to Mr. Craig at my house (he came there) to take to Somerville to be registered.

Q. At what time in the morning did he come?

A. I couldn't say; pretty early.

Q. Did you see anything of Mr. Anderson that morning?

A. I think not.

Q. Had any of those bonds been registered at the time you handed them over to Mr. Craig that Monday morning?

A. Not that I know of.

Q. Did he bring those bonds back to you again, or any of them?

A. No, sir.

290 Q. After that morning, did you ever see any of them again?

A. No, sir.

Witness (being shown Exhibit B 5, and also Exhibit B 6, on part of Bernards township) is asked whether he received those two papers; and, if so, from whom?

A. Well, I believe I received them from Mr. Craig.

Q. Do you know in whose handwriting those papers and signatures are?

A. I believe I can't say for certain.

Q. Are you acquainted with the handwriting of Daniel D. Craig?

A. I have seen it some, but I don't believe the body of these papers is in his handwriting.

Q. Did you see Mr. Craig write the receipt which he gave you for the first lot of bonds, which you delivered?

A. I can't say that I did.

Q. When you went to tax-payers who were land-owners to get their signatures to consents did you say anything to them as to who would pay the interest on the town bonds; and, if you did, what did you tell them?

(Objected to by Mr. Pitney as irrelevant and immaterial.)

A. I don't know that I did.

Q. Have any talk with them on that subject?

A. I don't think when I went around the first time I did; I don't think we had assurance that the interest would be paid when we went around the first time; that came up afterwards.

Q. Did you have any talk with any of those people about where or how the money to build the road was to be raised, whether it was to come from the stockholders or whether it was to be got on the bonds of the railroad company secured by a mortgage on the railroad property, over and above what might be raised on town bonds?

291 (Same objection.)

A. I did to some extent.

Q. State what you said to them on that subject.

A. I stated to them that there had been an estimate made of the cost, and that the townships and the other stock taken would finish the road, so that there would be no debt on it; and that I was informed so by the railroad officers.

Q. Name the railroad officers who gave you that information.

(Same objection.)

A. Judge Anderson was one; I think Col. Smith was another; I don't remember particularly about any others; I don't remember that John H. Lyon or J. B. Bassinger had anything to say on that subject.

Q. About when was it that you commissioners signed the second batch of bonds, that is about how long after you had signed the first batch?

A. I couldn't say.

Q. Did you sign as fast as your installments on the stock became due?

A. I think we did.

Q. About what amount of bonds was signed on the second occasion of signing?

A. I can't say anything about that.

Q. Was it more or less than the first batch?

A. I can't say.

Q. Where was the second batch signed?

A. Can't tell you that; no, I have no recollection about it; we had so many meetings that I can't remember.

Q. What was done with that second batch after the commissioners signed it?

A. I can't say what was done with them; they were signed and passed over to Mr. Craig immediately after signing them.

Q. Did you have anything to do with getting that second batch registered?

292 A. No, sir; and I do not know who did.

Q. When was the third batch of those bonds signed—how long after you signed the first batch?

A. I don't know how long; I suppose when the next installment became due.

Q. What amount of bonds was signed in this third batch?

A. I can't tell the amount, but I think they were all signed then.

Q. At what place were they signed?

A. Up here at Guerin's hotel.

Q. What was done with those when the commissioners had signed them?

A. They were deposited with Mr. Craig; I can't say whether or not he gave a receipt for them; I have no recollection of his giving any receipt for them.

Q. For what purpose were they deposited with Mr. Craig?

A. For safe keeping.

Q. For how long?

A. Until they should be paid out on installments, or ordered to be paid out; they were not all to be paid out at once, but only as the installments came due.

Q. When you deposited that last batch with Mr. Craig had any of them been registered?

A. I don't know about that.

Q. After that deposit was made of bonds did you give any order or any direction about the disposing or passing away of those bonds?

A. I did not.

Q. After you made that deposit with Mr. Craig did you ever again see any of those bonds?

A. I did not.

Q. Or did you have anything to do with disposing of them?

A. I did not.

Witness (being shown a paper purporting to be a memorandum) is asked:

293 Q. Is any part of the writing on that paper in your handwriting; and, if so, what part?

A. Yes, sir; only a small part of it; "January 16th, 1869, signed bonds to the amount 825,100;" that is all that is in my handwriting.

Q. In whose handwriting are the figures under what you say was written by you?

A. I think it is Judge Anderson's.

Q. In whose handwriting is the writing on the upper part of that paper?

A. I won't be certain, but I think it is Secretary Sanders'.

Q. When and where did you write that writing of yours on that paper?

A. I couldn't say where—more than the date of it here; I think it was done here at Guerin's hotel on the day it bears date.

Q. Why did you make that memorandum?

A. I couldn't say, except that it was for my own satisfaction.

Q. Did or did not the commissioners make a memorandum, or keep an account of the bonds they signed, showing at what times they signed bonds, the numbers and the amount signed on each occasion, and also showing when they disposed of them, to whom they disposed of them, and for what purpose?

A. I don't know that they kept any such record.

Q. Did the commissioners ever make any report to the township committee of the township of Bernards or to the township itself of the particulars of the bonds made and disposed of, by which they would know the dates, numbers, amounts in detail and in aggregate of the bonds made and disposed of, and the time when the principal was payable, or any similar report?

(Objected to by Mr. Pitney.)

A. I don't know whether they did or not.

Q. Did you ever have anything to do with making any such report?

294 A. I don't remember.

Q. Just state on what bargain the commissioners disposed of those bonds; what you were to get for them.

(Same objection.)

A. I don't know anything about that.

Q. Did they get anything for them; and, if so, what was it?

A. I don't know that they ever got a dollar; I never saw anything except those receipts and certificates of stock in the Passaic Valley and Peapack Railroad.

Q. Was it your understanding that the commissioners were to give the

bonds of Bernards Township to that railroad company and take pay for their bonds in the stock of that company, at par?

(Same objection.)

A. That is the way I understood it.

Q. Did the commissioners ever sell one of those bonds for money?

A. Not that I know of.

Q. Did they ever borrow any money upon a promise to give the lender these bonds for the loan at par, at seven per cent. interest?

A. I don't know of any.

Q. Did they ever try to do it?

A. Not that I know of.

Q. Did the commissioners ever offer to sell one of those bonds for money, at par?

A. I don't think they offered them at any price.

Q. While you were commissioner and making these bonds, and getting them ready to dispose of, did it occur to you that the commissioners had no power to make or dispose of any bonds except for cash, at par?

(Objected to by Mr. Pitney as immaterial.)

A. It did not.

295 Q. Was there nothing said to you or by you about that?

A. Not that I remember of.

Q. Didn't it occur to you that it was a strange proceeding to put the township in debt to the extent of a hundred and twenty-seven thousand dollars, and then get nothing for that vast debt except a certificate of stock on which not even a single dollar had ever been paid, and that the company had not property enough behind the stock to pay for printing the stock certificates?

(Objected to for same reason, and as leading and as argumentative.)

A. I don't know that I thought anything particular about it; I thought we were doing our duty according to the act—the meaning of the law.

Q. In the year eighteen hundred and sixty-nine you went about in your part of the township to get signers to additional consents, did you not?

A. Yes, sir.

Q. How did you come to do that?

A. I was called upon by the secretary, Sanders, stating that it was necessary for us to get the consent of a majority of all the tax-payers; I, in the first place, refused, telling him that I didn't want to do it; but he insisted on it and said that as I had done part of it I must go on and do the rest.

Q. You thought, did you not, that that part of the business was finished before you made any bonds at all?

(Same objection by Mr. Pitney.)

A. I did in getting the first consents; I did.

Q. What reason, if any, did Sanders give you for getting more consents signed?

(Same objection.)

296 A. It was decreed by the court that we should have a majority of the whole; that there was an injunction, he said, or something served on Bedminster Township, as near as I remember.

Q. Did you get additional consents after that call by Sanders?

A. Yes, sir.

Q. Did you at that time know, at the time you were getting that second set of consents, that the railroad company had got authority from the legislature to mortgage their property to the extent of three million dollars?

A. I heard of their getting that act; I can't say whether it was before or after getting the second consents.

Q. When you were getting those second consents did you tell the taxpayers you called upon that the railroad company now had power to mortgage its property at any time it saw fit to the extent of three million dollars, or that they already had made such mortgage?

(Same objection.)

A. I don't think I told them so; that leads me to believe that it hadn't passed when I went around the second time; I don't remember ever telling any one so.

(Mr. Vanatta offers in evidence the memorandum shown to the witness, and which he said had some writing on made by him.

Marked "Exhibit B 7," on part of defendants, The Inhabitants of Bernards.)

(Mr. Pitney objects to it as immaterial and irrelevant.)

Q. Did you not at any time have any assurance from the railroad company that it would pay the interest on these railroad bonds; and, if so, who was the officer or person who gave you that assurance?

A. I think I had assurance from the company—the board; it was at one of their meetings when we were called to sign bonds, it was announced to us at one of those meetings that they would pay the interest on the bonds for three years.

297 Q. Was anything of the kind said by the president of the company; if so, by whom was it and when was it?

A. I can't remember who said it.

Q. Did Judge Packer say or write anything on the subject?

A. I never heard Judge Packer say anything on the subject one way or the other, to my knowledge.

Q. Was there or was there not a printed paper purporting to be a letter from Judge Packer circulating in your township, which was used to show that Judge Packer was going to protect your township from those bonds?

A. I never knew of any paper or letter.

Q. Haven't you got a paper of that description in your pocket now?

A. I have got what was published in the newspapers immediately after the meeting of the board in Newark, after Packer was first elected; it came out of the Newark Journal.

Q. Do you recollect what year this was in?

A. I recollect it was the year that Packer was elected the first time.

Q. Were you at the meeting that elected Judge Packer at that time?

A. I was.

Q. Was such a letter as this paper shows read to the meeting on that occasion?

A. I think there was, as near as I can remember; I don't remember who read it; it was read before the polls were opened for voting.

(The printed paper in which the letter appears is offered in evidence, subject to all objections that may be taken to it.

Marked "Exhibit B 8," on part of the defendants, The Inhabitants of the township of Bernards.)

Cross-examination by Mr. PITNEY:

298 Q. You were induced to vote for Judge Packer's directors on an understanding that he would go on and finish the road and pay the interests on the bonds, were you not?

A. I was; I was induced to vote for him so that the company would finish the road and pay the interest on the bonds.

Q. How long did Judge Packer have control of the road?

A. I think one year.

Q. You understood that Judge Packer was president of the Lehigh Valley Railroad, did you not?

A. I can't say about that.

Q. Did you not understand that he desired to get a railroad outlet to New York?

A. I had that impression some way, but I don't know how I got it.

Q. During the time Judge Packer was president of the road was not a good deal of money spent in improving and extending it and buying the right of way, &c., between Summit and Newark?

A. I couldn't say about that.

Q. Did you ever see the books of accounts kept during Judge Packer's time?

A. I think not.

Q. Did you ever make inquiry as to whether or not Judge Packer was spending any money on the road?

A. I never made any inquiry of the company that I know of; I have heard more or less about it, but it was out-door talk; it was the general talk that he wasn't spending the money that he was expected to spend.

Q. Did you subscribe for stock?

A. No, sir.

Q. As commissioner?

A. I was commissioner, and acted in that capacity.

Q. You understood, did you not, that the plan was to get subscriptions of stock sufficient to build the road?

A. Yes, sir.

Q. And that is what you told people when you talked about it?

A. I believe I did.

299 Q. Was not that the substance of what you told the signers of the consent papers?

A. I say I told people what I have stated before; I don't know whether you call that the substance.

Q. You understood, did you not, that Mr. Craig was to get these bonds registered?

A. I understood that he was to get the first lot registered; any farther I couldn't say.

Q. Was not that what you said to the people, that the plan of the railroad people was to build the road on the proceeds of the stock subscriptions?

A. I did; I understood it that way.

Q. Judge Packer and his associates have since built a road across New Jersey, haven't they?

A. I believe he has got so he can go across the State; I don't know whether it is his road or not.

Q. Can you now tell why these bonds were not sealed, how it happened that they were not sealed?

A. I say I can't tell anything about it.

Q. Was the failure to seal them intentional or unintentional, as far as you know?

A. So far as I know, I supposed they were all right.

Q. You supposed they were all right when you handed them over to Mr. Craig?

A. I didn't know that there was anything deficient about them.

Q. Did you ever count the number of actual tax-payers on the assessor's duplicate of eighteen hundred and sixty-seven or eighteen hundred and sixty-eight?

A. I don't think I did.

Q. Don't you recollect now that, at the request of Mr. Sanders, you made a count of the number of tax-payers on the duplicate of eighteen hundred and sixty-seven and eighteen hundred and sixty-eight?

A. I don't remember anything of the kind.

Q. And that you wrote a letter to Mr. Sanders, giving the number in eighteen hundred and sixty-seven as seven hundred and eighty-two, and in eighteen hundred and sixty-eight as seven hundred and seventy-nine?

3001 (Objected to as not cross-examination, and as not competent evidence anyhow.)

A. I might have done it, but I don't remember anything of the kind now.

Redirect examination by Mr. VANATTA:

Q. Did you prepare any of those bonds, or have anything to do with preparing or directing the preparation of the bonds that were signed?

A. I don't know that I did at all; I don't think I ever saw one or knew anything about them until they were brought here to be signed—here at the hotel.

Q. Who brought them here to be signed, or produced them to the commissioners?

A. As near as I can remember, the bonds were there on the table unrolled, and the commissioners were looking at them before signing.

Q. Did you get no information at the time as to who had drawn up those bonds, and who had attended to having them printed and getting them ready to be signed?

A. I can't say that I did; I got some information some way that a man of the name of Mr. Arthur, of Brooklyn, had been concerned in finishing them up; I couldn't tell who employed Arthur; my information came from Judge Anderson.

(Mr. Pitney objects to all part of answer that is hearsay.)

Q. Did the commissioners ever pay anything to anybody for drawing those bonds, or printing, or engraving them, if they were engraved; or were they ever asked to pay for any such services to anybody?

A. I didn't pay anything and was not asked to; I can't say about the rest.

Q. Did you or the other commissioners before signing those bonds ask

the opinion of any lawyer or of anybody experienced in the preparation and force and effect of contracts of that character as to whether or
301 no those bonds were such as the commissioners had the power to sign, and such as they ought to sign, and what there was to do in order to make them complete and perfect?

A. I never did; I don't know what the others done.

Q. I assumed that you wouldn't have signed your name to those papers if you had not supposed them to be right, and I also suppose that you supposed that there was nothing more for the commissioners to do in the execution of those bonds than to sign your names to them; now I would like to know how you got or where you got those impressions or that belief; was it from a careful examination of the thing yourself, or because you understood from somebody else in whom you had confidence that they were all right; now which was it, or how was it?

A. It was both; in the first place his suppositions were right, and in the last place I read the law some and thought that it was all right to sign them; supposing the bonds were got up right, and I had the opinion of others that we were going all right and doing our duty.

Q. What led you to suppose or believe that the bonds were got up all right?

A. I supposed they were done by business men who knew how to do it, and I trusted to their judgment.

Q. Who were present at the time the first batch of bonds were signed?

A. John H. Anderson, myself, Secretary Sanders, I think Mr. D. D. Craig; I think some of the New Providence commissioners were there; I couldn't say particularly; I think the president of the railroad company, but I couldn't say for certain.

Q. Was Col. John Condict Smith there?

A. He was there.

Q. Was J. B. Bassinger there?

A. I couldn't say about that.

Q. Was anything said by Col. Smith, Mr. Craig, or the president of the railroad company, or by any one there, as to whether those bonds needed to have seals on to make them bonds?

A. I don't know that there was; I don't think I ever heard a word about putting seals on; I never thought of seals myself at that time.

302 Q. Did Mr. Cyrus Curtis ever call upon you to put seals on these bonds?

A. I don't think he did, or anybody else; I don't know the man at all.

Q. Or anybody for him or in his behalf?

A. I don't know that anybody spoke to me about putting seals on.

Q. Did Mr. Pitney?

A. I don't know that Mr. Pitney ever spoke to me on the subject at all.

Q. Please name those persons who expressed to you the opinion that the commissioners were going on all right and doing their duty, or as many of them as you remember.

A. I don't know that I can remember any of them in particular—Judge Anderson was one.

Q. In all that business did you have any advisor on questions of law except Judge Anderson?

A. I don't think we had.

Q. And on questions of that kind did you or did you not uniformly act on the judge's opinion or judge's advice on legal questions connected with that business?

A. I believe I did.

JOHN GUERIN.

Sworn to and subscribed before me, at Morristown, this twenty-eighth day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

This examination was adjourned, by consent of counsel, to Saturday, the thirty-first day of August, inst., to take place at my office, at half past nine o'clock in the forenoon.

G. W. JENKINS,
Special Examiner.

This examination was resumed this thirty-first day of August,
303 eighteen hundred and seventy-eight, pursuant to adjournment, in the presence of Jacob Vanatta, esquire, counsel for defendants, The Inhabitants of the Township of Bernards, and H. C. Pitney, esquire, counsel for complainant.

SAMUEL R. DE COSTER, a witness produced on part of defendants, The Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I live in Bernards Township; I am a farmer, and have been a farmer and a carpenter together in that township for the last twenty-eight or thirty years. I have paid tax in that township for about twenty-eight years; I was a tax-payer there in eighteen hundred and sixty-seven, eighteen hundred and sixty-eight, and eighteen hundred and sixty-nine.

Q. Were you requested to sign a consent for the township to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company?

A. Yes, sir; Mr. John Guerin made that request of me. I can't tell when it was that he asked me to give that consent; I think it was somewhere in August, but I can't tell the year. I don't know whether or not there had been bonds issued already for that purpose. I think it was the first year that signatures were asked for that Mr. Guerin came to me; I am not sure.

Q. Just state what was said to you on that occasion and what you said. (Objected to as immaterial, irrelevant, and hearsay.)

A. Mr. Guerin asked me if I would consent to have the township bonded, and I told him that I didn't know whether I would or not; I wanted to see the law. He told me Anderson had the law. I told him I wouldn't sign until I had seen it or had seen Anderson. I went to see Anderson, and he had lent the law to somebody and hadn't it, but he said he would tell me what was in it; that he had read the law.
304 (Mr. Pitney renews his objection to this evidence as immaterial, irrelevant, and hear-say) and that the township wouldn't have the bonds to pay, and that the railroad company would pay the interest for the first three years, and that then the road would be running and would make money enough to pay the interest themselves. He said the township

would control the road; would have the first lien on it. I don't know that there was anything else said. After that conversation I signed for it. I think I went back and signed Mr. Guerin's paper; I had told him if I signed any I would sign his.

Q. Did you sign any petition directed to Judge Dalrimple, requesting him to appoint commissioners on part of the township to execute the law with reference to bonding the township?

A. I think I did not; I don't recollect having been asked to sign any such petition.

Q. If your name is to a petition of that kind can you tell how it got there?

A. No, sir.

Q. Did you ever authorize any one to sign your name to such a petition?

A. I never heard of such a petition, that I know of, until this week.

Cross-examination by Mr. PITNEY:

Q. Have you been to Somerville to look at the original petition on file to see whether your signature to it is genuine or not?

A. No, sir.

Q. When did you first hear of your signature being on such a petition?

A. Monday, I think.

Q. It would hardly be safe, would it, for you to swear that you never signed such a petition without first looking at it to see whether or not the supposed signature is genuine?

305 A. I don't know; I don't ever remember hearing of such a petition until last Monday; I was under the impression that the court appointed the commissioners and that the township had nothing to do with them.

Q. Do you suppose that John H. Anderson would sign your name to such a petition?

A. I never did think he would do so.

Q. Do you think he would then make an affidavit that you had signed the petition in his presence, if you hadn't done so?

A. I shouldn't suppose he would.

Q. Which do you think is the more probable, that you had forgotten that you signed the petition or that John H. Anderson committed forgery and perjury?

(Objected to as merely an argument.)

A. If there was any forgery or perjury committed, I think some one else had a hand in it; I don't think though that John Anderson ever brought that paper to me to sign.

Q. Whom do you mean by some one else?

A. I don't mean any one else in particular.

Q. If you should go to Somerville and ask the clerk of the court to let you see that paper and should find your name signed there, and John H. Anderson's affidavit annexed, made at the time, in which he swore that you signed it in his presence, what would you say then?

(Objected to because no state of facts like that is shown to exist, even apparently.)

A. Yes, sir; if I didn't think [illegible] my handwriting I would say so; I wouldn't care whose affidavit wa

Q. You were in favor of the railroad, weren't you, generally?

A. Yes, sir.

Q. Your influence in the neighborhood, generally, was in favor of having the railroad, when the matter was being discussed?

306 (Objected to as immaterial.)

A. I never used *no* influence either way that I know of, for or against it; I didn't have much time to talk about it; I had business enough of my own to attend to.

Q. You understood, didn't you, that in case the township decided to issue bonds in aid of the railroad they were to have stock in the railroad?

A. I understood that they were to have the first lien on the road and to control the road.

Q. How were they to control the road?

A. I don't know, and I didn't ask them how they were going to control the road, and I didn't ask them how they were to have the first lien on the road; Anderson said they were to have the first lien on the road.

S. R. DE COSTER.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

OLIVER DUNSTER, a witness produced on part of the defendants, The Inhabitants of the Township of Bernards, being duly sworn, on his oath saith:

I am sixty-seven years old; I am a farmer in Bernards Township, and have been for forty-five years; I was born there and have always lived there, and have always been a farmer; I owned in that township, in eighteen hundred and sixty-seven, eighteen hundred and sixty-eight, and eighteen hundred and sixty-nine, about two hundred and seventy-five acres.

Q. In the year eighteen hundred and sixty-eight were you asked to sign a consent that the township of Bernards be bonded for the purpose of raising money to be invested in the stock of the Passaic Valley and Peapack Railroad Company?

307 A. Yes, sir.

Q. Who asked you to do that?

A. Anderson and Col. Smith; John H. Anderson and Col. John Smith—a big man.

Q. Where did they meet you when that request was made?

A. They came to my house.

Q. State what they said to you and what you said to them about you signing.

A. They asked me if I was willing to give my consent to bond the township; I told them I wanted to know first the conditions, or what they were bonding on; they said it was for to raise money to build a railroad; I then says, "What will the township have in security of these bonds——" (Mr. Pitney objects to all this as immaterial, irrelevant, and hearsay) and they said to me that the township would hold the first mortgage on the road; I then says, "If that be the case you can't injure the people; I'll give my cons[illegible]l;" that was about what was said.

Q. Did you sign the consent then?

A. I think I did; I either did it myself or authorized them to do it.

Q. Had Col. Smith at that time any connection with the railroad company; and, if so, what was it?

A. I don't know anything about it; it is the only conversation I ever had with him; it was the first time I saw him at all.

Q. Had you ever had much or any dealings with railroad stocks or bonds?

A. None at all; I refused to have anything to do with them.

Cross-examination by Mr. PITNEY:

Q. You have been engaged in other business besides farming, have you not?

A. I have been engaged in buying and selling bark.

308 Q. How far is your farm from the railroad station at Bernardsville?

A. About half a mile.

Q. You understood when you signed the consent, did you not, that the railroad would probably run to Bernardsville?

A. Well, there were different opinions; some said Bernardsville, some said Liberty Corner.

Q. How near did you live to John A. Anderson?

A. About a mile; I had known him all my life-time.

Q. What was his character and standing in that neighborhood and township?

A. Very good.

Q. Considered to be an honest man and a truthful man?

A. Yes, sir.

Q. You don't suppose that he meant to lie to you or to deceive you in any way?

A. Well, I don't know as he did at the time.

Q. He wasn't that kind of a man, was he?

A. He wasn't considered so.

Q. You were in favor of the railroad in a general way, weren't you.

A. Well, I didn't take any interest one way or the other; I don't think I talked it up.

OLIVER DUNSTER.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

FERDINAND VAN DORN, a witness produced on part of defendants, The Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I live in Bernards Township, near the line between that township and Morris County; I am seventy-one years of age; I have been a land
309 owner in Bernards Township since eighteen hundred and forty-two; my real estate there consists of a mill and a farm of about seventy acres, and I have twenty acres in Morris County besides.

Q. In the year eighteen hundred and [illegible]-eight were you requested to

A. I wouldn't care whose name

sign the consent that bonds of the township of Bernards should be issued to borrow money to invest in the stock of Passaic Valley and Peapack Railroad Company; and, if so, who made the request of you?

A. I was; Judge John H. Anderson, Col. John Smith, and some others—Bishop Janes among them; Bishop Janes came alone.

Q. At the time that consent was presented to you, what, if anything, was said by Mr. Anderson or Mr. Smith about your singning it, and what did you say?

(Objected to as immaterial, irrelevant, and hearsay.)

A. Well, they used about the same conversation with me as with other people; that they wanted to borrow the credit of the township to build this railroad; I told them that I was opposed to the railroad and gave my reasons why; I told them that my objection was that it would ruin my business; they thought not, of course; they finally left, and next came Bishop Janes; I don't know how many times I saw Anderson and Col. Smith afterwards; I didn't give my consent at their first call or their second, or third.

Q. Did they overcome or remove your objections finally; and, if so, in what way?

(Same objection by Mr. Pitney.)

A. Well, Col. Smith then came alone, and wanted me to go with him alone out riding; he took me on Mr. Child's hill and showed me where the road was coming through and what a beautiful thing it would be, and so forth; we spent the day riding around, talking about the railroad; I pointed out to him how the first stockholders of the Morris road, or many of them, lost their money when it was first built, and also the Central Railroad; how the first stockholders there had lost their money,
310 and some Western railroads that I had heard of had bonded as they wanted to bond our township, and how they had lost their money, and I told him that I couldn't go for bonding, and had told my neighbors what my opinion was; and my strongest point with them was, as I thought, that they would take the township bonds and build the road as far as they would go, and then they would have something to mortgage and then finish out the road in that way; Judge Anderson said that they could not mortgage the road; we had the charter there; I think it was the charter; Col. Smith turned to it and told me that they could not, according to the charter, mortgage the road, and I couldn't see by the charter as they could; and every objection I could get up they would put me down on it some how or other, so that I had to yield most of the points, I acknowledge; Col. Smith said in our conversation that he had seventy thousand dollars of stock in the road, and said he, you know all I have got I have made myself; that there never should be a shovel of dirt moved for the road until he knew where every dollar was to come from to build the road and equip it; that he expected to be one of the managers; that he wouldn't be so foolish to put his money in unless he could manage it; he said they could not mortgage it; I remember his saying that distinctly, because that is the main point I took to get clear of them.

(Same objection by Mr. Pitney continued.)

Judge Anderson also told me that he had got up the charter himself, and had had (I think he said) three of the best lawyers of the State to

guard the people in the charter against any fraud that might possibly take place; that they didn't want the money from the people at all; it was the credit of the township, and the people wouldn't have a dollar to pay, except the interest for two years, perhaps three at the outside.

Q. Where was Judge Anderson when Col. Smith told you that he had seventy thousand dollars of the stock?

A. They were all together in my parlor, we three.

Q. Did he say what he had given or paid for that stock?

311 A. No, sir; he merely said he had seventy thousand dollars in it.

Q. What part of his fortune did that constitute; did he say?

(Same objection by Mr. Pitney.)

A. All he had; so I took it from his conversation.

Q. Did he say whether he was favorable or opposed to mortgaging the road?

(Same objection by Mr. Pitney.)

A. Opposed to it.

Q. State his words in which he said he was opposed to mortgaging the road?

(Same objection by Mr. Pitney.)

A. He said he had made his money himself and he wasn't going to embark in anything where it could slip through his fingers; that is the substance of what he said; I can't tell the exact words.

Q. State then if you can what induced you finally to sign.

(Same objection by Mr. Pitney.)

A. Well, I had great confidence in Judge Anderson; Col. Smith I knew nothing about; and the judge said the township could not be injured in any way by bonding; and I was personally opposed to the road on my account and didn't like to stand in the way of public improvement, and the influence of Bishop Janes and such men urging it; I finally said to them: "I think I can go at something else; if you think the road will be of so much advantage to the township, I don't think I ought to stand in the way."

Q. Did you become satisfied, or were you not satisfied, that there

312 would be no mortgage to supersede the claim of the township on the road before you gave your consent?

A. Judge Anderson being a member of the legislature and having got up the charter, and being the leading man in the township, I said to the judge: "If this is as you say and you are sure of it, I will sign for bonding;" I took the pen and I hesitated whether I should sign or not, and looked the judge in the face and said: "Judge, if this comes out as you say, it may be right; if not, you are politically damned in this township;" he said he knew that, and his lips trembled when he said so; and I am satisfied that there wasn't another man in that township or in the State of New Jersey that could have got me to sign except Judge Anderson, and he knowing about it as he did; so I signed it.

Cross-examined by Mr. PITNEY:

Q. You read the paper before you signed, didn't you?

A. Yes, sir; I suppose I did; I never sign a paper without reading it.

Q. You had also read the bonding act, hadn't you?

A. I have really forgotten whether I did or not.

Q. You were referring to the bonding act, were you not, and not to the charter of the railroad, when you said that Judge Anderson stated that he had drawn the act himself, and had taken great pains to protect the people from frauds, &c.

A. I am a little at a loss there, whether it was the charter or the bonding act, but it was the pamphlet that guided and governed the bonding; there is no doubt that it was the bonding act.

Q. Do you recollect what year Judge Anderson was in the Senate?

A. I do not.

Q. You understood that the township was to have stock in the road, didn't you?

A. I did.

Q. Was Judge Anderson a member of the Senate at the time you signed the consent?

313 A. I don't recollect.

Q. And what you were afraid of was that a mortgage would be put on the road and the stock would be swept away?

A. Yes, sir.

Q. Judge Anderson and Colonel Smith were both sanguine that the road would be a paying road, weren't they?

A. Yes, sir.

Q. That is after it had got started?

A. The idea was that after two years the township would be released from any responsibility arising from it.

Q. They stated, didn't they, that the dividends on the stock would pay the interest on the bonds?

A. I don't know that they said that. There was so much said that I don't recollect it all. They might have said it. They were there from nine o'clock in the morning until after tea in the evening, and I don't recollect all that was said.

Q. Did you not understand that the proposed mode by which the township would be relieved from liability would be by appropriating the dividends on the stock to pay the interest on the bonds?

A. The understanding was that the road would relieve the township after two years, or three at the outside. The interest I am speaking of.

Q. My question was as to the machinery by which it was to be accomplished?

A. From the dividends from the road.

FERD. VAN DORN.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

AARON DILLEY, a witness produced on part of the defendant, The Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

314 I am a land owner and resident of Bernards township, and have been, I think, about twenty-eight years. I should think I resided

very nearly the central part of the township. In eighteen hundred and sixty-eight I owned about one hundred acres in that township.

Q. In eighteen hundred and sixty-eight were you asked to sign a consent that bonds of the township be issued to borrow money to invest in the stock of the Passaic Valley and Peapack Railroad Company?

A. I can't be positive about the time, but about that time I was asked. Judge John H. Anderson made the request. I think I met him along the road. He was alone when he talked to me.

Q. State the conversation that took place between you and Judge Anderson about your signing; what you said and what he said, as near as you can remember.

(Objected to by Mr. Pitney as immaterial, irrelevant, and hearsay.)

A. He commenced to talk about the railroad and that it would be a good thing for our township, and that they wanted to get the good-will of the people, and that the road should be built through the township, and that the township should hold the first mortgage; that we would never be called upon to pay any part of this money, except we might have to pay some part of the interest, but that he didn't think we would ever be called upon for any. I think I hesitated at the time. I never had any other conversation with him besides this one time, and I think I agreed and gave my consent that I would sign at that time.

Q. What induced you to consent?

(Same objection by Mr. Pitney.)

A. I signed for the reason that I thought it would be good to have a road through the town if we were not to be burdened by this tax. The statement of the judge was that we would not have to pay any part of it, except, perhaps, part of the interest.

315 Q. Had you ever owned or dealt in railroad stocks or bonds?

A. I had not, sir.

Q. Had you ever dealt in the stock or bonds of any corporation?

A. Very little.

Cross-examination by Mr. PITNEY:

Q. You read or heard read the paper you signed, didn't you?

A. I didn't sign Mr. Anderson's paper; only talked to him about it; *I signed John Guerin's.*

(Question repeated.)

A. I am not able to say; Mr. Guerin came some little time after the conversation between me and the judge.

Q. You are quite sure that the judge said the township would have a mortgage?

A. Yes, sir.

Q. Do you think that Judge Anderson at the time intended to make any false statement to you?

A. I couldn't say about that; I did not think so.

Q. Was he that kind of a man?

A. I thought not.

Q. Do you now think it more probable that Judge Anderson made a deliberately false statement to you, or that you might be mistaken in your recollection or understanding of what he really did say to you?

A. I couldn't say.

Q. You might have misunderstood Judge Anderson?

A. I think not; I think I understood him.

Q. Or you might misrecollect?

A. I think not.

Q. If you did not understand or misrecollect, then Judge Anderson must have made a deliberately false statement to you, didn't he?

A. It seems that it has turned out so.

316 Q. There wasn't any such thing contemplated at all, was there, as a mortgage by the railroad to the township?

A. We were to hold—the township was to hold—the first right; that was my understanding.

Q. What do you mean by "the first right?"

A. The first mortgage, as I said before.

Q. But that idea was entirely false, wasn't it; there was no such thing in reality to be done, was there, as a mortgage to be given by the railroad to the township?

A. That I don't know.

Q. Don't you know perfectly well that there never has been any mortgage given by the railroad to the township?

A. I do not know; I have no knowledge of it.

Q. Don't you know that it never was in reality intended or expected that any such mortgage was to be given?

A. I do not.

Q. And don't you know that if John H. Anderson told you that the township was to have a mortgage on the railroad, he told you a deliberate and willful falsehood?

A. I can't say about that; it might have turned out different from what he expected it would.

Q. Don't you know that there never was anything in the charter of the railroad company, or in the bonding act, which authorized or contemplated that the railroad company would give a mortgage to the township of any kind; don't you know that there was no such thing in the book that the railroad should give the township a mortgage?

A. I do not.

Q. Well, if there wasn't any such thing possible, and if John H. Anderson knew it, he must have told you a deliberate lie, mustn't he?

(Objected to as irrelevant and argumentative.)

A. Well I can't say.

Upon the examiner's reading the testimony to witness, witness states that Judge Anderson may have said "claim" or "lien" instead of "mortgage."

AARON DILLEY.

317 Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

DANIEL D. CRAIG, a witness produced on part of the defendants, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

Q. You previously stated, Mr. Craig, that you were an officer of the Passaic Valley and Peapack Railroad?

A. Yes, sir.

Q. Did you part of the time act as secretary?

A. I think not; I am not positive; the company kept a book in which the proceedings of the board of directors were entered.

(Witness being shown a book purporting to be minutes of the New Jersey West Line Railroad Company, formerly the Passaic Valley and Peapack Railroad Company, commencing June third, eighteen hundred and sixty-eight, is asked:)

Q. Is that the book referred to in your last answer?

A. I think this is the book.

Q. Did you act as secretary in recording the first entry in this book?

A. Yes, sir; that is my signature.

Q. You were connected with the company prior to that date, weren't you?

A. That I can't state; it was in existence two or three years before I had anything to do with it; I have nothing to recall to mind when I became first connected with it; I do not know where the minute-book of the proceedings of the company prior to that date is; I never had charge of the books; I can't say whether John H. Anderson was connected with the company from the time of its organization to the time I became connected with it or not.

Q. What was your understanding about it?

318 (Objected to for want of knowledge.)

A. It will be all guess-work. I have nothing to recall it to my mind.

Q. Was that book used as the minute-book of the company from the first date in it, as long as you continued to be connected with the company as an officer?

A. I think it was.

(Mr. Vanatta offers this book in evidence, marked "Exhibit B 9," on part of defendant, the inhabitants of the Township of Bernards.)

The examination of Mr. Craig was suspended at this point, for the purpose of examining Jerome E. Heldebrant.

On this twenty-eighth day of December Mr. Craig appeared, and after hearing his testimony read, wished to make the following statement:

I see that in my testimony I have said that I could not say whether John H. Anderson was connected with the company from the time of its organization or not; after thinking of the matter, I think he was—but I can't say positively.

Cross-examination by Mr. PITNEY:

I have no personal knowledge on the subject; I was not connected with it myself.

Q. Looking at the first, second, and fourth pages of minute-book Exhibit B 9, I see your name is signed four times; in whose handwriting are those entries?

A. I should say they were in Beverly C. Sander's; he was afterwards secretary of the company; I see that my name is signed as secretary; they might have elected me secretary pro tem., but what I mean is that

319 I did not act as secretary in keeping the minutes, &c.; I simply signed my name; that is my recollection.

D. D. CRAIG.

Sworn to and subscribed before me, at Morristown, this twenty-eighth day of December, A. D. 1878.

G. W. JENKINS,
Special Examiner.

JEROME HELDEBRANT, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I reside in Bernards Township, Somerset County; I was a land owner there in eighteen hundred and sixty-eight; I was a farmer; I signed the consent to bond the township; John Guerin requested me to do it.

Q. When Mr. Guerin asked you, did you make any objection to doing it; and, if so, what was your objection?

(Objected to as immaterial and irrelevant.)

A. I objected to it because I thought I had enough to do at present; I had lately bought a place and was in debt on it, and I thought that would probably bring more debt on me; I stated that to Mr. Guerin; Mr. Guerin said to me then that that would never injure me; that I would never be called on to pay any of the bonds; he didn't think I would have to pay any interest; that I might have to pay one installment, or something to that effect; that was the principal thing he said, that I needn't be afraid of having to pay anything.

Q. At that time, did he say what protection or security the township would have if the railroad company was not successful?

(Same objection.)

320 A. He said that the township would have the first—I can't say positively whether he said mortgage or lien—to secure the township in that way.

Q. Had you ever had anything to do with managing railroad corporations, or dealing in their stock or their bonds?

A. No, sir; I never knew anything about railroad matters.

Q. What are the people of Bernards Township chiefly engaged in; what is their general business?

A. Farming.

Q. Any manufacturing business in the township of any noticeable amount?

A. I don't know of any, of any particular amount.

Q. Which is the largest town or village in the township, and how many inhabitants are in that village?

A. Baskingridge, I think; I couldn't tell the number of inhabitants.

Cross-examination by Mr. PITNEY:

Q. Isn't this what Mr. Guerin said to you in substance that the townships along the line of the road were all going to bond and take stock; and that the road would be substantially owned and controlled by the townships?

A. No, sir.

Q. Wasn't anything said by him to you about New Providence and Bedminster townships bonding?

A. I don't remember any talk of that kind.

Q. Do you mean now to say that Mr. Guerin represented to you that the township of Bernards would have the first lien or claim on the road for the money they advanced?

A. Yes, sir; that is what he told me.

Q. Is Mr. Guerin a man of good standing for truth and veracity in his neighborhood?

A. As near as I know.

Q. How long have you known Mr. Guerin?

A. I have known him from my boyhood up; since I was ten or twelve years of age; I have lived within four or five miles of him.

Q. Do you think Mr. Guerin was a man who would make a false representation or statement to you?

321 (Objected to as irrelevant.)

A. I should judge not.

Q. If in point of fact there was not any plan or arrangement by which the township of Bernards was to have the first lien or claim on the road, and John Guerin knew it, he must have made a wilful, false statement to you, mus'n't he?

A. I couldn't say.

Q. Why can't you say; you understand the question, don't you?

(Objected to as a mere argument, that the witness can't swear to and ought not to.)

A. I can't say about that.

Q. You say that John Guerin stated to you that the township was to have a first lien or claim on the railroad for the money which was to come from their bonds; now if that was not true, and John Guerin knew it wasn't true, he must have lied to you, mus'n't he?

(Objected to as incompetent and irrelevant, and as a question that asks for no facts, but for an opinion that the witness is not entitled to express.)

A. I can't say.

Q. Which is most likely, in your judgment, that John Guerin should have told you a wilful and deliberate falsehood, or that you should have misunderstood him, or that you should now misrecollect what he did say?

(Same objection by Mr. Vanatta.)

A. I didn't misunderstand, and as to his telling me a deliberate falsehood, I can't say.

(Question repeated.)

A. That is my only answer.

322 Q. Did you think over in your mind, or calculate whether or not the money advanced by Bernards township was going to be enough to build the whole road?

A. No, sir; I didn't suppose that amount would build the whole length of the road.

Q. Did you think over how anybody else who advanced money to build the road, either individual or township, would be secured, if Bernards township had the first lien?

A. I can't say that I did.

JEROME E. HELDEBRANT.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

HENRY BAIRD, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am not quite sixty-one years of age; I have been a land owner in Bernards township since eighteen hundred and fifty-two; I signed the consent to bond the township; that is I gave my consent to sign; I don't think I did it myself; John H Anderson applied to me to sign.

Q. Did you have any objection or doubt about giving your consent at first? And, if you had, state what the difficulty in your mind was.

(Objected to as immaterial and irrelevant.)

A. I told Mr. Anderson that I didn't like the idea of being bonded to build a railroad; he said there would be no danger; that we should never be called on for any money.

Q. Did he say what protection or security the township would have if the railroad company was not successful? And, if so, state it.

323 (Same objection.)

A. He said that the township would be safe, because they should have the first lien or first mortgage to secure them.

Q. Did you then sign or authorize your name to be put to the consent?

A. I did.

Q. Did you go with Judge Anderson to any other of the tax-payers of your township to ask their consent; and, if so, who were they?

A. I did; I went to Mr. John Whitenack, I think, first; from there went to Mr. Welch's (the next neighbor to Mr. Whitenack); from there to Mr. William Demun's; these three gave their consents; I am not sure they all signed the paper.

Q. Did they or either of them make objections or ask questions of Judge Anderson before signing?

(Same objection.)

A. I think they all did.

Q. What, if anything, did the judge say to them?

(Same objection.)

A. He said they needn't be uneasy, that they would never have anything to pay; I think he said it was the same as going security for the company to get money to go on and build the road.

Q. Say anything to them about the township's having the first lien or mortgage?

(Same objection, and as leading.)

A. I think he did.

Cross-examination by Mr. PITNEY:

Q. What was Judge Anderson's character for truth and veracity in that neighborhood?

324 A. Good, I think.

Q. Had he been surrogate of the county, judge of the court of common pleas, and State senator?

A. Yes.

Q. Do you think he intended to make any false representation to you?

A. I didn't think so at the time; I do not now.

Q. Did you read the charter of the railroad or the bonding act?

A. Not that I remember of, neither of them.

Q. If in point of fact, at the time John Anderson asked you to sign the consent there were no means by which the township could have a first claim or lien on the road, John Anderson must have known it, mustn't he?

A. I don't know.

Q. He was a man of sufficient intelligence to understand the law, wasn't he?

A. I think he was.

Q. And he also knew enough of the affairs of the railroad to know whether a bargain of that kind had been made, didn't he?

A. I didn't think he knew much about railroad business; that is what I thought at the time.

Q. Why did you then rely on his statements and give your consent?

A. I always put all confidence in Judge Anderson; he wouldn't do anything wrong, if he knew it, to injure me or my neighbors.

Q. It turned out, didn't it, that this story about the township's having a first lien or mortgage on the railroad was all bosh?

A. I don't know how to answer that; I don't know that they ever got it.

Q. If in point of fact there was no plan or bargain by which the township was to have, or could have, a first lien on the railroad, and John Anderson knew it, he must have made a false representation to you, mustn't he?

(Objected to as incompetent and irrelevant.)

325 A. I don't know.

Q. How do you account for his telling you that story?

(Objected to as immaterial.)

A. I can't account for it in any other way than that he believed what he told me. He was that kind of a man that I put confidence in everything he told me.

Q. But the statement which you say he made to you out to be false, hasn't it?

A. I suppose so.

Q. Now, if there wasn't anything in the law, as there was not, by which the township was to have, or could have, a first lien, how could John Anderson honestly tell you that?

A. I believe he thought so when he told me that; thought that there was.

Q. It isn't possible that you could be mistaken at all or could have misunderstood Mr. Anderson?

A. I don't think that I was mistaken but what he told me that.

Q. Which do you think the most likely, that you should be mistaken or should have misunderstood Mr. Anderson, or that he should have told you a wilful and deliberate falsehood?

(Objected to as irrelevant and incompetent.)

A. I don't think I am mistaken, and I don't think he would tell me a wilful lie about it.

Q. But if it should be so, either that you are mistaken or misunderstood him, or that he told you a wilful and deliberate falsehood, which is the most probable?

(Objected to on same ground as last objection.)

A. I answer as I did before; I don't think I was mistaken, and I don't think he would tell me a deliberate lie.

Q. Suppose both can't be true?

326 (Same objection.)

A. I don't know how to answer that.

Q. Were you ever mistaken in a matter of recollection?

A. Yes, sir.

Q. Did you ever misunderstand what a man said to you on a matter of business?

A. Yes, sir; but I think I recollect this very distinctly by its being talked about so many times over and over by the neighbors that we were not going to lose because they supposed we were safe by this arrangement. There has been a good deal of talk about this among the neighbors and tax-payers during the last three or four years.

Q. Isn't there a pretty strong public sentiment against paying the bonds?

A. Yes, sir.

HENRY BAIRD.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

CHARLES BARKER, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am sixty-six years of age. I am a farmer and a miller in Bernards Township. My mill is on the Mine Brook Stream, below Bernardsville. I have been a real-estate owner in that township for thirty-three years.

Q. Were you asked to give your consent to issue township bonds to borrow money to invest in the stock of the Passaic Valley and Peapack Railroad Company?

A. I was. I can't remember the year; about the time they were starting the railroad.

Q. Who requested you to give your consent?

A. John H. Anderson.

Q. What did you say to him?

A. I was not willing to sign.

327 (Mr Pitney objects as immaterial and irrelevant.)

My objections were that it would injure the place; that it would break up half the township; I told him that that was my opinion; we had a long conversation about it, and finally—I always respected John Anderson—but I told him finally that I would sign just on his say so; but I told him that I thought it wasn't right.

Q. State what he said in answer to your objection?

(Objected to as immaterial, and irrelevant, and hearsay.)

A. He said he didn't believe we would have anything to pay, or if we did have anything to pay, it would be the interest only for a year or so; that the railroad company would make enough to pay the bonds without the people of the township being called on.

Q. Did he say anything as to what would be the situation of the township if the railroad company should be unsuccessful?

(Same objection, and as crowding.)

A. I don't know that he did; he supposed that they would be successful, and that we would not be called on; the understanding was that we were to have the first claim on the road to guard against that.

Q. Did Judge Anderson say anything on that occasion about the township's having the first claim or lien on the road?

(Same objection and as leading.)

A. He said we were to have the first claim.

Q. Was any other tax-payer of that township present at that conversation between Judge Anderson and you; and, if so, who?

A. There was; Robert Heath.

Q. Did he sign his consent on that occasion, too?

A. I believe he did at the same time.

328 Q. Did he let his consent stand or not?

(Objected to as hearsay.)

A. I understood not.

Cross-examination by Mr. PITNEY:

Q. Did you not understand that the township was to have stock in the road for their bonds?

A. No, sir; I didn't understand that we were to have the first claim or mortgage on the road; I don't know that it was to be a mortgage; but the first claim at any rate.

Q. Did not Judge Anderson tell you that there was no mortgage on the road, and that the law did not provide for any mortgage; and that therefore the stock of the township would stand first?

A. I don't remember any such conversation.

Q. You don't mean to say that he used the word "mortgage?"

A. I think he did.

Q. Why were you in doubt about it in your answer to Mr. Vanatta?

A. It was some time ago, and I don't remember every word he said.

Q. Can you undertake to recollect the language used by Judge Anderson?

A. Not everything he said; he was there an hour, I suppose.

CHARLES BARKER.

Sworn to and subscribed before me, at Morristown, this 31st day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

WILLIAM DEMUN, a witness produced on part of the defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

329 I am a farmer in Bernards township; I have been a land owner there since November, 1864; I purchased property at that time;

I was requested to consent to bonding the township to raise money to invest in stock of the Passaic Valley and Peapack Railroad; Judge Anderson made the application to me; Mr. Henry Baird was present with him when he asked me; I think I was opposed to it when Judge Anderson first spoke about it.

Q. State what you said to Judge Anderson.

(Objected to as immaterial and irrelevant.)

A. I think I objected to the bonding of the township, from the record we had of other roads in their infancy, and I think he was willing to guarantee that there would be no danger; I think he was there three-quarters of an hour; I finally gave up after we had talked that length of time; he said they would give us the first claim or mortgage on the road, I am not positive which he said; I think I said to him that if he was sure that would be so, I would then sign.

Q. Did he say anything, and if anything, what, as to whether the town would have to pay any principal or interest on the bonds?

A. I think he said to me very similar; that we might be called on for the interest for two or three years, but he thought after that the road would pay its way; after I signed I don't think anything was said; I was in a hurry; I was drawing in oats; it was the latter part of July.

No cross-examination.

WILLIAM DEMUN.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

330 GARRET V. FREEMAN, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I live in Bernards township; I am fifty-two years of age; am a farmer; I have been a land owner in that township a little over fourteen years; I either signed the consent to bond the township or gave them my permit to sign it; Judge Anderson asked for my consent.

Q. Were you inclined to do it before he talked to you?

(Mr. Pitney objects as immaterial and irrelevant.)

A. No, sir.

Q. Did you state to the judge what your objections were; and if so, what did you tell him?

(Same objection.)

A. I think I told him that we might have them to pay, and I was afraid to sign; he told me that he didn't think the township would ever have a cent to pay; that possibly we might have to pay the interest the first or second year; something like that, as near as I can recollect; he said he didn't think the township would ever lose anything, because it would be secured by the first mortgage or the first claim; I think he said the first mortgage; finally I signed, or else I told him he might put my name down, I don't remember which.

Cross-examination by Mr. PITNEY:

Q. How long had you known Judge Anderson?

A. Ever since I was grown up.

Q. What sort of a man was he?

A. A very fine man.

Q. You don't think he would wilfully make a misstatement to you?

A. I don't know that he would; I don't think he would.

331 Q. Didn't he tell you that there was no mortgage on the railroad, and that the charter didn't allow a mortgage?

A. I don't think he did; I don't recollect it.

Q. And didn't he say that the township would have stock in the road, which would be the first interest in the road, because there was no mortgage; wasn't that what he said in substance?

A. I don't think he said any such thing as that to me.

Q. You were never mistaken in recollecting what was said to you on a matter of business?

A. Yes, sir.

Q. You know now, don't you, that there never was any mortgage to the township, and that there was never any mortgage to the township thought of by anybody who knew anything about it?

A. I don't know.

Q. If John Anderson knew at the time he was talking with you that there wasn't any mortgage thought of to be given to the township, he must have lied to you, mustn't he?

(Objected to as incompetent and irrelevant.)

A. I don't know.

Q. What do you think about it?

(Same objection.)

A. I don't think he meant to deceive the people.

GARRETT V. FREEMAN.

Sworn to and subscribed before me, at Morristown, this thirty-first day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

JOHN C. WEST, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

332 I reside in Bernards township; I have been a land owner there for twenty-one years; I am a farmer; I was requested by John Guerin and Oscar Conklin to sign consent to bond the township to raise money to invest in stock of the Passaic Valley and Peapack Railroad.

Q. Did you state any objection to signing; and, if so, what?

(Objected to as immaterial and irrelevant.)

A. I asked Mr. Guerin what the petitions were about signing the names to get the bonds; he told the bonds would never be called on for the farmers to pay them; I asked him what grounds he had that we should be clear of them; he told me that the contractors of the road would be bound to pay the first three years' interest, and after that the road would be so far advanced in three years that it would pay its own way, and that they would pay the bonds as fast as they got due and that there would be no danger that we would be called upon to pay for them.

Q. Did he say anything about what security the town would have against the bonds?

(Same objection.)

A. He told me that we were going to have the first bonds on the railroad for our township.

Q. Did you sign?

A. Yes, sir.

Q. Were you born in this country?

A. No, sir; I was born in Wurtemburg, Germany.

(No cross-examination.)

JOHN C. WEST.

Sworn to and subscribed before me, at Morristown, this 31st day of August, A. D. 1878.

G. W. JENKINS,
Special Examiner.

333 The examination was then adjourned, by consent of counsel, to the seventh day of September next, to take place at my office at half past nine o'clock in the forenoon.

On this seventh day of September, A. D. 1878, Jacob Vanatta, esq., counsel for the defendant, the Inhabitants of the Township of Bernards, and H. C. Pitney, esq., counsel for complainant, met at my office, pursuant to adjournment, at the appointed hour, and the examination was then adjourned by their consent to a day to be hereafter agreed upon by them.

On this twenty-eighth day of December, A. D. 1878, Jacob Vanatta, esquire, counsel for defendant, the Inhabitants of the Township of Bernards, and H. C. Pitney, esquire, counsel for complainant, met at my office, at Morristown, and in their presence the examination on part of the said defendants in this cause was resumed.

(Mr. Vanatta offers in evidence a certified copy of a deed from Bennington F. Randolph, master in chancery, to Rosewell G. Rolston, dated September 12th, 1878; also a mortgage, dated March 11th, 1870, made by the New Jersey West Line Railroad Company to Theo. F. Randolph and Benjamin G. Clark, trustees.

Mr. Pitney objects to the admission of these two papers on the ground that they are immaterial and irrelevant.

Marked exhibit "B 10" and "B 11," respectively, on part of defendant, the Inhabitants of the Township of Bernards.)

The examination of D. D. Craig was concluded, and is printed on page 215.

G. W. JENKINS,
Special Examiner.

334 The further examination was then adjourned by consent of counsel to Friday, the third day of January next, to take place at my office, at Morristown, at ten o'clock in the forenoon.

G. W. JENKINS,
Special Examiner.

On this third day of January, A. D. 1879, the examination of witnesses on part of defendant, the Inhabitants of the Township of Bernards, was resumed at the appointed hour and place, in presence of Jacob Vanatta, esq., and H. C. Pitney, esq., the respective counsel.

RALPH DAVENPORT, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I am seventy-three years old, and live in Pluckamin, Bedminister township, Somerset County, and have been all my life a resident of that township; I was born there; I represented that district—the first district of Somerset—in the legislature, I think in eighteen hundred and sixty-six and eighteen hundred and sixty-seven; I was in Trenton during the session of the legislature in the winter of eighteen hundred and sixty-eight; I was in attendance upon the session of the legislature during the whole of the session of eighteen hundred and sixty-eight, although I was not a member; I was in the employ of the Camden & Amboy and the Pennsylvania Company until eighteen hundred and seventy-three.

Q. Do you remember of there being a bill in the legislature that winter authorizing certain townships in the counties of Somerset, Union, and Morris to issue bonds to raise money to take stock in the Passaic Valley and Peapack Railroad Company?

A. There was a bill there of that kind; I don't know what counties were in it exactly; Mr. Smith, I think, had the handling of that bill—a big, large man; he seemed to have more to do with it than any one else; he was called Col. Smith; I don't know where he lived.

(Mr. Pitney objects to this evidence as incompetent and irrelevant.)

335 I thought he came from Morris-town.

Q. Do you know who introduced that bill?

(Same objection.)

A. No, sir, I can't say positive, but I think Mr. Anderson—Senator John H. Anderson.

Q. State whether you paid any attention to that bill; and, if so, how closely you watched it.

(Same objection.)

A. I didn't watch it at all, or only a very little, except that Mr. Smith had the handling of it and was very active about it until he got it through.

Q. Who besides Col. Smith worked for that bill or tried to aid its passage?

(Same objection.)

A. I don't know of any one; I don't know how it was with Mr. Lyons; I can't say.

Q. Were there any of the people of Somerset County who were making any effort or advocating the passage of that bill at or about Trenton?

A. Not that I know of.

Q. Did you try to help it on or what did you do about it?

(Same objection.)

A. I was opposed to it, and had nothing to do with helping it on.

Q. Did you see or hear of any petition from the people of Somerset County, asking for the passage of that bill?

(Same objection.)

A. None.

336 Q. Was this Col. Smith a resident of Somerset County at that time?

A. I say I don't know, but I think not; Col. Smith was a bird of passage, I think.

Q. Do you know whether then or soon afterwards he had anything to do with the construction of the West Line road?

(Same objection.)

A. I think he had; I won't speak positive, but I am pretty certain he afterwards put in a bill to widen the road.

Q. What did you see Col. Smith doing towards passing the bonding bill?

(Same objection.)

A. Well, I see him in the house among the members, very active and talking to them, and I judged from that that he was working for the bill—in fact I know he was.

Q. Was John H. Lyon in attendance upon the legislature while that bill was pending?

A. I rather think he was; but I am not positive.

Cross-examination by Mr. PITNEY:

John H. Anderson was senator at this time from Somerset County; he lived in Bernards Township all his life, I guess; was born there. John Bergen and Abraham T. Huff were the members from Somerset in eighteen hundred and sixty-eight; Mr. Bergen lived in Somerville. I knew John H. Anderson ever since he could walk, pretty near; I lived seven miles from him; his character was good; there was no better; he was universally known and respected; he was like very many others, got in bad company; and he did not have the strength in his township just before he died that he had the years before; I suppose Judge Anderson took an active part in getting this bonding bill through; he never said anything to me on the subject.

337 Q. If Judge Anderson had not favored the bill, could it have gone through in the natural course of things?

A. I can't answer that question. John J. Bergen favored it and voted for it; his assembly district included Bernards, Bedminster, Bridgewater, and another township.

Q. Could that bill have gone through—the bill for bonding—against the opposition of both Senator Anderson and Member Bergen?

A. I think not. Mr. Bergen's character was good; he was a man of high standing.

RALPH DAVENPORT.

Sworn to and subscribed before me, at Morristown, this third day of January, A. D. 1879.

G. W. JENKINS,
Special Examiner.

ABRAHAM T. HUFF, a witness produced on part of defendant, the Inhabitants of the Township of Bernards, being duly sworn according to law, on his oath saith:

I live in Neshanic, Somerset County; I was a member of the house of

assembly from Somerset County; I think it was in eighteen hundred and sixty-eight.

Q. Do you remember a bill introduced during the session of eighteen hundred and sixty-eight, authorizing certain townships in Somerset County and some other counties under certain circumstances to raise money and issue bonds and to invest in the stock of what was then called the Passaic Valley and Peapack Railroad Company?

A. I think I can recall a bill before the house for certain townships of Somerset County to give their support to build that railroad.

Q. Who, if anybody, outside of members of assembly and senators, urged and favored the passage of that bill?

(Objected to as immaterial and irrelevant.)

338 A. I know of no one, except it might have been a man known in Trenton as "big engineer Smith;" he was spoken of to me as "big engineer Smith;" I never met him but once, and had but about two minutes' conversation with him.

Q. Do you remember any one else saying or doing anything in favor of the passage of the bill; and, if so, whom?

A. Not of my own knowledge; I know of no one else, except as a common rumor would say, so and so is interested in a bill.

Q. Did any of the citizens of Bedminster or Bernards Township send any petition to the legislature that session in favor of that bill?

(Same objection.)

A. Not to my knowledge; I have no recollection of it at this time.

Q. Did any of the residents of Bedminster or Bernards, excepting John H. Anderson, ask you to favor or give your support to the passage of that bill?

A. I have no recollection of it; I believe I voted for it.

Q. Do you remember whether any one requested you to give your support to it; and, if so, who?

(Same objection.)

A. John H. Anderson, senator from our county, was speaking of the bill, and asked me if I would vote for it; I asked him if the people wanted to mortgage their farms to build railroads; he said the people wanted that road; I told him it didn't affect me and it didn't affect any of my constituents, and if he would be responsible for my vote I would vote for the bill, and if any question as to my vote arose among my friends in either of those two townships, he, Anderson, should come to the front and make an explanation of my vote to those people.

Q. But for the application of Judge Anderson for your support would you have voted for the bill?

339 (Same objection.)

A. Not without inquiring of some of the people of those townships if they wanted that act passed or not.

Q. As a rule were you favorable or unfavorable to that species of legislation; I mean your general view of that class of legislation?

(Same objection.)

A. I never believed in farmers building railroads; I am opposed to bonding private property for the benefit of corporations; in other words, I am opposed to a farming community mortgaging their farms to build railroads or public works, unless it is for property owned by the township.

Cross-examination by Mr. PITNEY:

I never met Col. Smith but once to my knowledge; then I had a very short interview with him; to the best of my knowledge I voted for the bonding act on the application of Senator Anderson; John J. Bergen spoke to me about it; he was in favor of it on the position that Anderson took with me; we were together at the time Anderson spoke to me, and after I replied, Bergen said: "It does affect my constituents, I being from the first assembly district."

(Objected to by Mr. Pitney as not responsive.)

Q. Did Mr. Bergen favor the passage of the bill and vote for it?

A. I can't say whether he voted for it, after so many years; he talked favorably of it.

ABM. T. HUFF.

Sworn to and subscribed before me, at Morristown, this third day of January, A. D. 1879.

G. W. JENKINS, *Special Examiner.*

340 Mr. Vanatta states that the examination on part of the defendant, the Inhabitants of the Township of Bernards, is closed.

G. W. JENKINS, *Special Examiner.*

341 United States circuit court.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS ET ALS., DEFENDANTS. } Examination.

Examination in rebuttal on part of complainant, taken before me by consent of counsel, this twenty-first day of January, A. D. 1879.

G. W. JENKINS, *Special Examiner.*

DANIEL D. CRAIG, a witness, recalled on part of complainant, being duly sworn according to law, on his oath saith:

These bonds were left in my charge, I can't say by whom—by some of the commissioners; most of my business, pretty much all, was done through Judge Anderson.

342 Q. What were the instructions given to you by the commissioners in reference to those bonds when they were placed in your hands?

A. I think the first that were left in my hands were two installments; the installments on the subscriptions to the stock of the railroad were to be ten per cent.; they were called ten per cent. installments; these two installments were left in my hands to be paid when called by the board of directors of the railroad company; these two first installments were left with me to pay the first installments called by the railroad on the subscriptions of the townships for the stock; I paid them to the company after the call was made by the railroad company; some more bonds were left in my hands for the same purpose after these two first installments; I used these the same way in which I had used the others; I did not permit

them to go out of my hands before the regular call was made by the board of directors; I can't say positive whether the whole were left with me in two or in three installments; I passed none of these bonds over to the railroad company before the regular call had been made by the company, to my knowledge. I will say here that one, if not two, of these commissioners were most always present with me at the meetings of the board of directors of the railroad company. Regular calls were made by the board of directors of the railroad company for payments of installments of the stock from time to time.

Q. Was any condition made by the commissioners as a preliminary to the transfer of the bonds to the railroad company that was not actually performed before you did transfer them?

(Objected to.)

A. No; not to my knowledge.

Q. Were you enjoined by the commissioners or either of them not to turn the bonds over to the railroad company in answer to calls for installments of stock unless other subscribers to stock also paid their installments?

A. No, sir.

Q. Did either of the commissioners lay any such injunction on you?

A. No, sir; I never heard the least lisp from either of them.

343 Cross-examination by Mr. VANATTA:

Q. Did you as treasurer of the railroad company make any entries or keep any account of the times when and the persons to whom you delivered the Bernards Township bonds?

A. I don't think I did.

Q. Did any one by your directions or for you make or keep any such account?

A. Not unless the secretary did of the amount of bonds that was paid over to the contractor. Mr. Beverly C. Sanders kept the account books of the railroad company while I was treasurer of the company.

Q. Does your memory enable you to say whether the times when and the persons to whom the railroad company or its officers disposed of those Bernards Township bonds appear in any of those account books kept by Mr. Sanders?

(Objected to, as the books will show for themselves.)

A. I couldn't say; I mean I don't remember about anything of that kind where there were any minutes.

Q. Please say why, while you were treasurer, you did not keep such an account for your own information and protection.

A. Well, there wasn't much passed, not a great deal besides bonds, and I supposed the books, minutes, and such like would show what I received and then I would know what I would have to account for.

Q. Did you account for those bonds; and, if so, to whom and when and where?

A. To the railroad company; I suppose at Jersey City; there was where the transactions were; I couldn't tell when; at different times while I was treasurer.

Q. Did you render an itemized account?

A. I made my report annually.

(Question repeated.)

344 A. Yes, sir; I suppose that is it.

Q. In that account did you state to whom and when you disposed of the Bernards Township bonds?

A. No, sir; I don't think I did.

D. D. CRAIG.

Sworn to and subscribed before me at Morristown this twenty-first day of January, A. D. 1879.

G. W. JENKINS,
Special Examiner.

345 COMPLAINANT'S EXHIBITS.

United States circuit court.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS ET ALS., DEFENDANTS. } On bill, &c.

EXHIBIT C 47.

To the judge of the circuit court of the county of Somerset, in the State of New Jersey:

We, the undersigned, being twelve or more freeholders, residents of the township of Bernards, in said county, which township is situate along the route of the railroad of the Passaic Valley and Peapack Railroad Company, do hereby apply to the judge of the circuit court of the said county wherein such township is situated to appoint, under his hand and seal, three freeholders residents of such township, to be commissioners for such township to carry into effect the purposes and provisions of the
346 act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, who shall hold their offices respectively for the term of five years, and until others shall be appointed.

Dated June , A. D. 1868.

Robert Blair.	Jacob K. Lewis.
John Mullen.	John Adamson.
James V. Bazure.	R. C. Bishop.
Thomas K. Heath.	Charles Barker.
Walter K. Sturgis.	Ira B. Prudden.
George Bender.	J. M. Fisher.
F. Thompson.	James L. Stevens.
Charles P. Crue.	Samuel Elsen.
James Allen.	James I. Hill.
I. W. Keeler.	A. F. Voorhies.
James H. Thompson.	S. R. D'Coster.

NEW JERSEY,
Somerset County, ss:

JOHN H. ANDERSON, being duly sworn, on his oath says that he is personally acquainted with the persons whose names are attached to the foregoing application; that they are all freeholders and residents of the township of Bernards, in the county of Somerset, New Jersey, and that they severally signed said application in the presence of this deponent.

JOHN H. ANDERSON.

Sworn to and subscribed this 27th day of June, 1868, before me.

JAMES H. THOMPSON,
Justice of the Peace.

347 The State of New Jersey to all to whom these presents shall come, greeting:

The annexed application in writing of twelve and more freeholders, residents of the township of Bernards, in the county of Somerset and State of New Jersey, situate along the route of the railroad of the Passaic Valley and Peapack Railroad Company, having on the 27th day of June, 1868, at five o'clock p. m., been presented to me, Van Cleve Dalrimple, judge of the circuit court of the said county of Somerset, at the court-house, in Morristown, New Jersey, I do hereby, in virtue of the requirements of the act of the legislature of said State entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, and in accordance with the provisions of said act, appoint John H. Anderson, John Guerin, and Oliver R. Stelle, three freeholders, residents of such township of Bernards, to be commissioners for such township to carry into effect the purposes and provisions of the said act, who shall hold their offices respectively for the term of five years, and until others shall be appointed.

In witness whereof I hereto set my hand and seal this sixth day of July, in the year eighteen hundred and sixty-eight, at Morristown aforesaid, it appearing to me by affidavit that notice of such application has been published in two newspapers printed and published in Morris County, and in three newspapers printed and published in Somerset County.

V. DALRIMPLE, [L. S.]
Judge of the Circuit Court of the County of Somerset.

STATE OF NEW JERSEY,
Somerset County, ss:

I, Matthew H. Vanderveer, clerk of said county and clerk of the circuit court and inferior court of common pleas of the county of Somerset, do hereby certify that the foregoing is a true copy of the applica-
348 tion for and appointment of three freeholders, residents of the township of Bernards, to be commissioners for said township to carry into effect the purposes and provisions of a certain act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, filed in my office July 10th, A. D. 1868.

In witness whereof I have hereunto set my hand and affixed the seal of said county this eighth day of March, A. D. 1876.

[L. S.] MATT. H. VANDERVEER, *Clerk.*

EXHIBIT C 48.

STATE OF NEW JERSEY,
Somerset County, ss:

I, John Guerin, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this State under the authority of the people. So help me God.

JOHN GUERIN.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit of said County.

349 STATE OF NEW JERSEY,
Somerset County, ss:

I, John Guerin, do solemnly promise and swear that I will faithfully, impartially, and justly perform all the duties of the office of a commissioner for the township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, according to the best of my abilities and understanding. So help me God.

JOHN GUERIN.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

EXHIBIT C 49.

STATE OF NEW JERSEY,
Somerset County, ss:

I, Oliver R. Still, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this State under the authority of the people. So help me God.

OLIVER R. STELLE.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit of said County.

350 STATE OF NEW JERSEY,
Somerset County, ss:

I, Oliver R. Still, do solemnly promise and swear that I will faithfully, impartially, and justly perform all the duties of the office of a commissioner for the township of Bernards, in the county of Somerset, to carry into ef-

fect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, according to the best of my abilities and understanding. So help me God.

OLIVER R. STELLE.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

EXHIBIT C 50.

STATE OF NEW JERSEY,
Somerset County, ss:

I, John H. Anderson, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this state under the authority of the people. So help me God.

JOHN H. ANDERSON.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

351 STATE OF NEW JERSEY,
Somerset County, ss:

I, John H. Anderson, do solemnly promise and swear that I will faithfully, impartially, and justly perform all the duties of the office of a commissioner for the township of Bernard, in the county of Somerset, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, according to the best of my abilities and understanding. So help me God.

JOHN H. ANDERSON.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

STATE OF NEW JERSEY,
Somerset County, ss:

I, Matthew H. Vanderveer, clerk of the county of Somerset, and also clerk of the circuit court of said county, do hereby certify that the above is a true copy of the affidavits of John Guerin, Oliver R. Stelle, and John H. Anderson, filed in my office July 10, 1868.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, December 31, 1877.

[L. S.] MATT. H. VANDERVEER, *Clerk.*

352 EXHIBIT C 53.

Proxy.

Know all men by these presents that we, the commissioners of the township of Bernard, county of Somerset, do hereby constitute and appoint John H. Anderson our attorney and agent for us and in our name, place, and stead, to vote as our proxy at any election of directors of the Passaic Valley and Peapack Railroad Company, according to the number of votes said township should be entitled to vote if then personally present.

In witness whereof we have hereunto set our hands and seals this ninth day of June, one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON. [L. S.]
OLIVER R. STELLE. [L. S.]
JOHN GUERIN. [L. S.]

Sealed and delivered in the presence of—

[Stamp.]

(Paper annexed containing following names:)

John H. Lyon.	J. B. Bassinger.	Joseph Alward.
I. Condict Smith.	Sam. B. Smith.	Jarris Johnson.
D. D. Craig.	John H. Anderson.	Chas. N. Lockwood.

353 EXHIBIT C 58.

Certificate of stock.

No. 96.] STATE OF NEW JERSEY. [2,400 shares.

NEW JERSEY WEST LINE RAILROAD COMPANY.

This is to certify that the township of Bernards, of Somerset County, N. Jersey, entitled to twenty-four hundred (2,400) shares of the capital stock of the New Jersey West Line Railroad Company, transferable only on the books of the company at their office, by it or its attorney or commissioners, upon surrender of this certificate.

In testimony whereof the said company have caused this certificate to be signed by their president and secretary and the seal to be affixed.

Newark, N. J., March 3rd, 1873.

[L. S.] B. I. BEEKMAN, *President.*

F. F. VANDERVEER, *Secretary.*

[Stamp.]

(Endorsed:)

For value received hereby sell, assign, and transfer unto shares of the within stock, and authorize to transfer the same on the books of the company.

Dated this day of , 18 .

In presence of—

(NOTE.—On each side:) "Shares, $50 each."

354 EXHIBIT C 59.

Certificate of stock.

No. 107.] STATE OF NEW JERSEY. [shares.

NEW JERSEY WEST LINE RAILROAD COMPANY.

This is to certify that the township of Bernards, of Somerset County, N. J., is entitled to fifty-two shares of the capital stock of the New Jersey West Line Railroad Company, transferable only on the books of the company at their office by it or its attorney or commissioners, upon surrender of this certificate.

In testimony whereof the said company have caused this certificate to be signed by their president and secretary and the seal to be affixed.

Bernardsville, N. J., December 26th, 1873.

[L. S.] B. I. BEEKMAN, *President.*

WM. FERGUSON, *Secretary.*

[Stamp.]

(Endorsed:)

For value received hereby sell, assign, and transfer unto shares of the within stock, and authorize to transfer the same on the books of the company.

Dated this day of , 18 .

In presence of—

(NOTE.—On each side in margin:) "Shares, 850 each."

355 DEFENDANTS' EXHIBITS.

U. S. circuit court, district of New Jersey.

BETWEEN CYRUS CURTIS, COMPLAINANT, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et als., defendants. } On bill, &c.

EXHIBIT B 1.

Agreement entered into the day of October, in the year eighteen hundred and seventy-two, between those persons whose names are hereunder written, witnesseth:

Whereas the undersigned are severally the owners and holders of certain bonds issued by the township of Bernards, in the county of Somerset and State of New Jersey, in aid of the Passaic Valley and Peapack Railroad, the amount of said bonds held by each being shown opposite to his or her signature;

And whereas certain interest coupons of said bonds are due and
356 unpaid, and the undersigned are desirous of collecting the same and anticipate litigation, difficulty, and expense in so doing, and there-

fore deem it expedient and mutually advantageous to combine together and share the expense of such litigation:

Now, therefore, we, the undersigned, do combine together for the purpose aforesaid, and we do hereby assign and transfer to Cyrus Curtiss, of the city of New York, all the coupons so past due and held by us, as our trustee, and we do authorize and instruct said Cyrus Curtiss to proceed to take such legal advice and employ such counsel in the premises as he shall think best for our interest, and to bring such suit or suits or take such legal proceedings to enforce the payment of such overdue coupons as he shall be advised is proper and expedient.

And we do agree to and with said Curtiss and each with the other to indemnify and save harmless our said trustee in the premises from time to time and at all times, and to pay to him such sum or sums of money, as often as he shall call for the same, as shall keep him supplied with the funds necessary for the purpose aforesaid, such payments to be divided between us in proportion to the amount of said bonds so held by each of us.

And the said Cyrus Curtiss hereby accepts said trust and employment, and agrees to carry out the same to the best of his skill and ability.

CYRUS CURTISS. [L. S.]

Witness to signature of Cyrus Curtiss—
W. A. BREWER, JR.

	MATTHEW MITCHELL,	[L. S.]	five hundred dollars.
	H. B. STONE,	[L. S.]	three thousand dollars.
	H. O. MARSH,	[L. S.]	five hundred dollars.
	C. H. MULFORD,	[L. S.]	one thousand dollars.
357	J. J. COOPER,	[L. S.]	four thousand dollars.
	HENRY BALL,	[L. S.]	four thousand dollars.
	EDWIN FORD,	[L. S.]	two thousand dollars.
	JAMES HOLMES,	[L. S.]	two thousand dollars.
	GEO. A. LAWRENCE,	[L. S.]	four hundred dollars.
	LEWIS C. BURROUGHS,	[L. S.]	eight hundred dollars.

EXHIBIT B 2.

The undersigned tax-payers of Bernards Township hereby give notice to all persons that we will take and use all lawful ways and means, now and hereafter, to defend ourselves against any tax that may be hereafter imposed to pay interest or principal on any bonds of said township issued to take stock in Passaic Valley and Peapack Railroad Company, believing said bonds to be unjust and illegal.

Dec. 3, 1869.

	JOHN G. SCHWARTZ.	EDWARD BENBROOK.
	TUNIS VANNESS.	WILLIAM MCBRIDE.
	ADRIAN V. KING.	JOHN C. AMERMAN.
	PHILIP SKINNER.	DAVID KLINE.
	WILLIAM SMITH.	RICHARD AMERMAN.
	JOSHUA TOTTEN.	WILLIAM WIGGIN.
	GEORGE W. TOTTEN.	CHARLES BEMBROOK.
358	CHARLES H. TOTTEN.	PAUL AMMERMAN.
	GEORGE E. QUIMBY.	GEROE W. PERRINE.
	WILLIAM W. BENBROOK.	

EXHIBIT B 3.

MILLINGTON, N. J., *May* 8, 1872.

MR. A. PACKER:

DEAR SIR: I regret that I did not get the notice in time to attend the meeting of the board the 30th ult.

I have felt for some time that I should like an interview with you, and having failed pardon me now for addressing you on the subject of our town stock. And, first, I would say that my position as commissioner is very unenviable, growing out of the fact that the early pledges and promises that were made to us commissioners and by us to the township have long since proved to be worthless, and very many that signed for the bonding of the townships do feel that their signatures were obtained through false presentations, not to say fraudulent means.

I will now name but two to explain the above. I worked faithfully for the bonding of Bernards, upon the ground that none should be
359 bonded unless all the townships on the line of the road complied, thereby securing stock enough to build said road.

And, second, as I intimated, the road was to be built by stock, and no R. R. bonds hanging upon us when completed. You are aware how much of this has been realized. These and others are the grounds of repudiation.

I regret exceedingly that the township of Bernards takes this suicidal stand, which I doubt not will in the end result in the payment of the bonds with heavy costs.

Now, Judge Parker, I feel to solicit your aid in this our extremity. Can you not make some arrangement to take our stock and redeem our bonds? The bonds can now be bought very much below their face value. It does seem unjust that Bernards and New Providence alone should be thus burdened, while all others alike benefitted with us should escape all embarrassment.

You are aware that upon taking the direction of the road last June that you promised to protect the town stock, and I doubt not your integrity to fulfil in just the spirit in which you made it; and again let me ask is not the present a favorable time for you and the township to confer harmoniously together and lift the cloud of our embarrassment and let the light of your protection shine upon us? Could you not do it as cheaply now as ever?

What do you consider our stock worth or what will you give for our stock under the present circumstances, and thereby control the stock as you now do a large portion of the first-mortgage bonds. I only add that I have tried to shape all my official acts in the light of judgment and justice to the township of Bernards, and shall ever hold myself in readiness to council, work, and even sacrifice personally for the township I represent.

Trusting you will consider the above and write me an early reply,

I remain yours, most truly,

O. R. STELLE,
Millington.

P. S. In case you are indisposed to relieve the township by compromise or otherwise, where do you propose to place our town stock in case of a foreclosure of the mortgage bonds?

Yours, &c.

360 EXHIBIT B 4.

To the township committee of the township of Bernards, in the county of Somerset, N. J.:

The undersigned, commissioners appointed to subscribe and take stock in the Passaic Valley and Peapack Railroad (now the New Jersey West Line Railroad) report that they subscribed for and took for the township of Bernards twenty-five hundred and forty shares of the stock of the said railroad, amounting to one hundred and twenty-seven thousand dollars, and gave bonds of the township for that amount to the said railroad company for the said stock; they also made an agreement with the said company for the said company to pay the interest on the said bonds as it became due for the term of three years from the time of issuing the same, and the said company did pay the interest on the same until the first of January, 1871; since that time they have refused to pay said interest, and the same is still due and unpaid; the said interest is payable semi-annually, *of* the first days of July and January; and as there are two payments now due, and a half year becoming due on the first of July, and one in January, 1873, it is requisite for the township committee to make an arrangement to meet not only the interest of last year that is now due, but to make provision for the interest for the present year as the same becomes due. Said amount of interest payable semi-annually is four thousand four hundred and forty-five dollars, making eight thousand eight hundred and ninety dollars now due for the past year; and the sum of eight thousand eight hundred and ninety dollars to be provided for to meet the July and January interest as it becomes due the present year.

Dated April 15th, 1872.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

361 EXHIBIT B 5.

Received from the commissioners of the township of Bernard the following bonds of said township, issued under the act of the legislature of the State of New Jersey, approved April 9, 1868, authorizing said township to issue bonds and take stock in the Passaic Valley & Peapack Railroad Company, the said bonds being the first installment paid to the treasurer of said company under a resolution of the board of directors passed on 10th Decem., 1868, viz:

Ten (10) bonds of one thousand (1,000) dollars each, No. 1 to No. 10 inclusive; and No. 66 to No. 69 inclusive, four (4) bonds of five hundred (500) dollars each; and No. 146 to 152 inclusive, seven (7) bonds of one hundred (100) dollars each, amounting in the whole to twenty-one bonds and representing twelve thousand seven hundred (12,700) dollars; the same being received by the company at the par value thereof as the first installment of ten per cent. under the above named call by the board of directors.

DAN'L D. CRAIG,
Treas. P. V. & P. P. R. R. Co.

Dated January 16, 1869.

EXHIBIT B 6.

Received from the commissioners of the township of Bernard the following bonds of said township, which I promise to have registered
362 in the county clerk's office of Somerset County and returned to the said commissioners, viz:

No. 11 to No. 20 inclusive, ten (10) bonds of one thousand (1,000) dollars each; from No. 70 to No. 73 inclusive, four (4) bonds of five hundred dollars each; and No. 153 to 159 inclusive, seven (7) bonds of one hundred (100) dollars each, making in the whole twenty-one (21) bonds and representing twelve thousand seven hundred dollars.

DAN'L D. CRAIG,
Treas. P. V. & P. P. R. R. Co.

Dated January 16, 1869.

EXHIBIT B 7.

BERNARDS TOWNSHIP.

No. 1 to No. 65 inclusive,	65	bonds of	$1,000	$65,000
No. 66 to No. 145 inclusive,	80	bonds of	500	40,000
No. 146 to 365 inclusive,	220	" of	100	22,000
	365			$127,000
				25,400
				101,600

January 16th, '69, signed bonds to the amount of..... $825,400

$1,000 bonds,	20	$20,000
$500 "	8	4,000
$100 "	14	1,400
		$825,400
		20
		508 00

363 EXHIBIT B 8.

NEW JERSEY WEST LINE RAILROAD.

The fifth annual meeting of the stockholders of the New Jersey West Line Railroad was held in the office of the company, 445 Broad street, Wednesday. The meeting was called to order by Judge Anderson, president of the board of directors, about sixty persons being present.

The following board of directors was elected: Asa Packer, Robt. H. Sayre, Charles Hartshorne, J. B. Bassinger, Benj. G. Clark, H. E. Packer, John H. Lyon, John C. Littell, Oliver R. Stelle, they having received all the votes polled, or 10,432.

The following letter from Asa Packer was read and received with applause:

The town commissioners of Bernards and New Providence have given their proxies and the direction of the New Jersey West Line Railroad Company to the Hon. Asa Packer, upon the general understanding with him that he will complete said railroad as an independent through road, at least from Bernardsville to Newark, within a reasonable time, say eighteen months from this date, and that he will protect the town stock.

(Signed) ASA PACKER.

Officers to serve for the ensuing year were elected as follows: Asa Packer, president; Robt. H. Sayre, vice-president; S. H. Bassinger, treasurer pro tem.; Thos. N. McCarter, secretary pro tem.

Mr. Packer, Mr. Sayre, Mr. Hartshorne, and Mr. Packer, jr., are all connected with the Lehigh Valley Railroad, while the remaining four directors represent the townships through which the line runs.

364 EXHIBIT B 10.

Deed.—Bennington F. Randolph, master, &c., to Rosewell G. Ralston.

This indenture, made this twelfth day of September, in the year eighteen hundred and seventy-eight, between Bennington F. Randolph, a master in chancery of the State of New Jersey, party of the first part, and Rosewell G. Ralston, of the city of New York, in the county of New York and State of New York, party of the second part, witnesseth:

Whereas on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, a certain writ of fieri facias was issued out of the court of chancery of the State of New Jersey, directed and delivered to me, the said Bennington F. Randolph, then and still being a master in chancery of the said State of New Jersey, and which said writ is in the words or to the effect following, that is to say:

NEW JERSEY, *to wit:*

[L. S.] The State of New Jersey to Bennington F. Randolph, esquire, one of the masters of the court of chancery of New Jersey, greeting:

Whereas on the eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-eight, by a certain decree
365 made in our court of chancery, before our chancellor, at Trenton, in a certain cause therein depending, wherein Theodore F. Randolph and Benjamin G. Clarke, trustees for the first-mortgage bondholders of the New Jersey West Line Railroad Company, are complainants, and the New Jersey *Weshine* Railroad Company, Charles Hartshorne and Caroline C. Hartshorne, his wife; Catharine A. Beekman, John R. Van Derveer, and William Z. Larned, executrix and executors of Benjamin F. Beekman, deceased; Catharine A. Beekman, John Whitehead, trustee of Clara D. Thornton and Albert G. Thornton; Clara D. Thornton and Albert G. Thornton, her husband; Phœbe Grummon, James Jaggers, Henry H. Jones, John Hays, Mrs. John Hays, his wife; Joseph T. Howland, Denmon N. Beardsley, George H. Smith, Joseph John Potter, Hubert Scoville, The Orange National Bank, Moses H. Acker, Mary

Ann Dorell, William Z. Larned, receiver of the New Jersey West Line Railroad Company; The Trustees for the Support of Public Schools, Asa Packer, and Stephen U. Caldwell are defendants, it was ordered, adjudged, and decreed that certain mortgaged premises, land, franchises, and property described in a certain trust-deed or mortgage made by the said New Jersey West Line Railroad Company to the said Theodore F. Randolph and Benjamin G. Clark, trustees aforesaid, bearing date the eleventh day of March, eighteen hundred and seventy, and mentioned and set forth in the bill of complaint in said cause, that is to say, all and singular the railroad of the New Jersey West Line Railroad Company, and all the appurtenances thereto belonging at the date of said mortgage, acquired and to be acquired, constructed and to be constructed, throughout and along the entire main line of said company's railroad from the eastern terminus of said railroad at the city of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the westerly terminus of said railroad at the Pennsylvania State line, including all the lands and real estate then acquired and that have since been acquired by the said company, on which the said main line of the said company's railroad is by law authorized to be constructed; also the bridges across the Delaware River
366 and the tracks thereon, and all the tracks, bridges, viaducts, and fences then on and that should be on and belonging to the said main line of said railroad, together with all the franchises, powers, and privilege to own, obtain, construct, operate, manage, and maintain the said main line of railroad possessed by the said company as a corporation, also the depots, station-houses, engine-houses, car-houses, freight-houses, water-stations, turn-tables, machine and other buildings and structures then on or along and adjacent to said main line of railroad belonging to or that have since been acquired or used by said company on or along said main line of road of said company, together with the land on which the same then were or have since been erected or acquired, or that have since been acquired by said company; and all the machinery, tools, implements, and materials for constructing, operating, repairing, or replacing the said line of railroad, or any part thereof; and the right of way, road-bed, and other grounds then forming and that have since formed part of and then belonging or have since belonged to the said line of railroad, embracing, as to the parcels and items of property thereinbefore in said mortgage specified as conveyed thereby, such and such parts thereof as had been theretofore acquired by, constructed, or placed in the possession of the said company, as also such as have since been acquired by or constructed or placed in the possession of the said company, and which forms or constitutes the said main line of railroad, and lands, buildings, and structures thereto belonging; also all the locomotives, tenders, cars, and other rolling stock or equipment which, by virtue of the contract for the construction of said main line and equipment thereof, and bridge across the Delaware River, have since been placed on the said railroad, or furnished to or procured by the said company for that purpose; and all the property, franchises, rights, and things, of whatsoever name or nature, held or acquired at the date of said mortgage, or which have since been held or acquired, by the said New Jersey West Line Railroad Company, or its successors, pertaining to the said main line of railroad or the equipment thereof, together with
367 all and singular the tenements, hereditaments, and appurtenances

to the said main line of railroad lands and premises, or either thereof, belonging or in any wise appertaining, including all lands, premises, franchises, and property, of whatsoever nature, acquired by said New Jersey West Line Railroad Company subsequently to the execution of the complainant's said trust-deed or mortgage, and pertaining to the main line of railroad of said company, or the equipment thereof, from the eastern terminus of said railroad in the city of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said road at the Pennsylvania State line, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof, and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said New Jersey West Line Company, and of the said defendants, of, in, and to the same, and to every part and parcel thereof, with the appurtenances, be sold to raise and pay the sums of money mentioned in said decree, with interest, to wit:

First. The sum of four millions four hundred and ten thousand two hundred and twenty-three dollars and eighty-five cents in gold coin of the United States, due for principal and interest on the bonds secured by a deed of trust or mortgage, bearing date the eleventh day of March, one thousand eight hundred and seventy, duly executed and delivered by the said New Jersey West Line Company to said Theodore F. Randolph and Benjamin G. Clark, trustees, and recorded in the clerk's office of the county of Union, March 15th, A. D. 1870, at 1 o'clock p. m., in book 11 of mortgages for said county, on page 621, &c.; in the clerk's office of the county of Somerset, on the 15th day of March, A. D. eighteen hundred and seventy (at 3.47 p. m.), in book C No. 2 of mortgages for Somerset County, on pages 579, &c.; in the clerk's office of Morris County, March fifteenth, A. D. eighteen hundred and seventy, in book S 2 of mortgages,
368 on pages 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, and 182, and in the register's office of the county of Essex, on the fifteenth day of March, A. D. 1870, at fifty-five minutes after eleven o'clock in the forenoon, in book L 5 of mortgages for Essex County, N. J., on pages 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, and 494, together with the lawful interest thereon, to be computed from the first day of November, eighteen hundred and seventy-seven, being the date of master's report, until the same be paid and satisfied, and also the costs of the said complainants.

Second. The sum of eleven thousand two hundred and eighty-five dollars and seventeen cents in currency, due to the said defendant Joseph John Potter on a certain judgment entered in the supreme court of the State of New Jersey on the seventh day of January, eighteen hundred and seventy-three, for the sum of eight thousand three hundred and ninety-seven dollars and forty-three cents debt and forty dollars and ninety-six cents costs of suit in a certain cause therein pending, wherein the said Joseph John Potter was plaintiff and the said New Jersey West Line Railroad Company was defendant, together with lawful interest thereon from the first day of November, eighteen hundred and seventy-seven, being the date of the master's report, until the same be paid and satisfied, and also the costs of the said defendant Joseph John Potter; and that for that purpose a writ of fieri facias should issue out of this court directed to Bennington F. Randolph,

esquire, one of the masters of this court, commanding him to make sale absolutely and in fee simple according to law of the said premises, land, franchises, and property described in the said mortgage and in said decree set forth, and that he should sell the same in the following parcels and order:

First. All the lands, premises, franchises, and real property covered by said mortgage and trust-deed in one parcel.

Second. The locomotive and tender "Schuylkill No. 2" and all necessary tools in one parcel.

369 Third. The locomotive and tender "New Providence No. 1" and all necessary tools in one parcel.

Fourth. The nine cars mentioned in said decree, viz, three dirt-cars (two small), six flat cars, in one parcel.

Fifth. The balance of the personal property, viz, forty tons iron rails, old; forty tons iron rails, new (amounts estimated); two tons iron spikes, one pair old car-wheels, and eleven engine-tank springs in one parcel; and that the surplus money arising from such sale, if any there be, should be brought into the said court subject to the further order of the said court, as by the said decree remaining as of record in our said court of chancery, at Trenton, doth and may more fully appear.

And whereas the costs of the complainant have been duly taxed at eight hundred and twenty-eight dollars and fifty-nine cents, and the costs of the defendant Joseph John Potter have been duly taxed at thirty-nine dollars and thirty-five cents: Therefore you are hereby commanded that you cause to be made of the premises, land, franchises, and property aforesaid by selling the same for the purpose in the parcels and in the order aforesaid, and that out of the moneys arising from such sale you do pay:

First. To the solicitors of the complainants the sum of eight hundred and twenty-eight dollars and fifty-nine cents costs.

Second. To the complainants or their solicitors the said sum of four million four hundred and ten thousand two hundred and twenty-three dollars and eighty-five cents in gold coin of the United States, together with interest thereon from the first day of November, eighteen hundred and seventy-seven.

Third. To the defendant Joseph John Potter, or to his solicitors, the said sum of eleven thousand two hundred and eighty-five dollars and
370 seventeen cents in currency, together with lawful interest thereon from the first day of November, eighteen hundred and seventy-seven, and also the sum of thirty-nine dollars and thirty-five cents of costs, and that you have those moneys before our said chancellor in our court of chancery aforesaid, at Trenton, on the first Tuesday of February next, to render to the said complainants and defendant, and also the surplus money, if any there be, to abide the further order of our said court according to the decree aforesaid; and at said sale you may receive as cash from the purchaser or purchasers, his or their representatives or assigns, bonds and interest coupons of the same, secured by said trust-deed or mortgage, at such rate per centum of the par value thereof as will be payable to the holders thereof upon the distribution of the proceeds of the sale, provided, nevertheless, that in any case there shall be paid in actual cash so much of said purchase-money, not to exceed twenty thousand dollars, as you, the master, shall direct; and you are to make return at the time and place

aforesaid, by certificates under your hands, of the manner in which you shall have executed this our writ, together with this writ.

Witness Theodore Runyon, esquire, our chancellor, at Trenton aforesaid, the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

H. S. LITTLE, *Clerk.*

MUIRHEAD & MCGEE, *Sol'rs.*

As by the record of the said writ of fieri facias in the office of the clerk of the said court of chancery of the State of New Jersey, in book Q 4 of executions, page 367, &c., may more fully appear.

And whereas I, the said Bennington F. Randolph, as such master as aforesaid, did in due form of law, by public advertisement signed by myself and set up in five or more public places in each of the counties of Essex, Union, Morris, Somerset, and Hunterdon, the counties wherein the real estate belonging to the said New Jersey West Line Railroad Company is situ-
371 ated, one at least of which was set up in each of the townships in said counties in which said real estate is situated at least two months next before the time appointed for selling the same, and also set up the said advertisements in at least three places in the township of Millburn, in the county of Essex, and in at least three places in the township of Summit, in Union County, and in at least three places in the township of Bernards, Somerset County, these being all the townships in which the chattels mentioned in said fieri facias are situated, at least five days next before the time appointed for selling the same, all of which notices so set up were set up in public places in the State of New Jersey, and also published the said advertisement in the Newark Daily Advertiser, a newspaper printed and published at Newark, in Essex County, the county-seat of said county, and in the Orange Journal, also printed and published in said county of Essex and also in the New Jersey Journal and the Elizabeth Daily Herald, two of the newspapers printed and published in Elizabeth, the county-seat of the county of Union; and also in the True Democratic Banner and The Jerseyman, two of the newspapers printed and published in Morristown, the county-seat of the county of Morris; and also in the Somerset Messenger and the Somerset Unionist, two of the newspapers printed and published at Somerville, the county-seat of the county of Somerset; and also in the Hunterdon County Democrat, a newspaper printed and published at Flemington, in Hunterdon County, the county-seat of said Hunterdon County; and in the Clinton Democrat, a newspaper also printed and published in said county of Hunterdon, all of which said newspapers were printed and published in the State of New Jersey, at least four weeks successively, at least once a week next preceding the time so appointed, giving public notice that said property would be exposed to sale at public vendue on Saturday, the twenty-ninth day of June, eighteen hundred and seventy-eight, at two o'clock in the afternoon of that day, at the court-house in the city of Newark, in the county of Essex and State of New Jersey; at which time and place so appointed for the sale, I, by order of the chancellor, served upon me on
372 said last-mentioned day, directing me to adjourn said sale for four weeks, permitting me to adjourn from week to week, adjourned said sale publicly for the space of one week, to wit, to the sixth day of July,

eighteen hundred and seventy-eight, at the same hour and place; and on said day and at said place last mentioned I did further publicly adjourn the said sale to thirteenth day of July, eighteen hundred and seventy-eight, at the same hour and place; at which last-mentioned hour and place I did further publicly adjourn said sale to the twentieth day of July, eighteen hundred and seventy-eight, at the same hour and place; at which last-mentioned time and place I did further publicly adjourn said sale to the twenty-seventh day of July, eighteen hundred and seventy-eight, at the same hour and place; at which last-mentioned time and place I did then and there again publicly adjourn said sale to the third day of August, eighteen hundred and seventy-eight, at the same hour and place; at which last-mentioned day, hour, and place I did then and there, openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, expose the property described in said fieri facias as the first parcel for sale at public vendue to the highest bidder, under and by virtue of said writ of fieri facias, whereupon the said party of the second part, by John J. Flanagan, his agent in that behalf and for that purpose, did then and there bid therefor the sum of fifty thousand ($50,000), and no one bidding any more or so much therefor, the said property so as last aforesaid offered for sale was then and there struck off and sold to said party of the second part, the highest bidder as aforesaid. I then, within the hours last aforesaid, next offered at public vendue the property described in said fieri facias as the second parcel, and the said party of the second part, by John J. Flanagan, his agent as aforesaid, bidding therefor the sum of five hundred dollars ($500), and no one bidding so much or more for the same, the said second parcel was struck off and sold to the said party of the second part, the highest bidder as aforesaid. I did not offer the property described in said fieri facias as the "third parcel" for sale, for the
373 reason that an order made by the chancellor of the State of New Jersey, on the twenty-fourth day of June, eighteen hundred and seventy-eight, was served on me, directing that the locomotive described as said third parcel was free from any lien of the complainant's mortgage in the said fieri facias mentioned, and that service of said order upon me making sale as master as aforesaid under said fieri facias be a supersedeas upon the said locomotive described as the "third parcel" as aforesaid. I then, within the hours last aforesaid, next offered at public vendue the property described as aforesaid as the fourth parcel, and the said party of the second part, by John J. Flanagan, his agent as aforesaid, then and there bidding therefor the sum of eighty dollars ($80), and no one bidding so much or more for the same, the said fourth parcel was struck off and sold to the said party of the second part as aforesaid, at the price last aforesaid, he being the highest bidder for the same. I then, within the hours last aforesaid, next offered at public vendue the property described as aforesaid as the fifth parcel, and the said party of the second part, by John J. Flanagan, his agent as aforesaid, then and there bidding therefor the sum of one thousand dollars ($1,000), and no one bidding so much or more for the same, the said fifth parcel was struck off and sold to said party of the second part at the price last aforesaid, he being the highest bidder for the same. Afterwards, by a notice in writing, under the hand and seal of the said John J. Flanagan, bearing date the fifteenth day of August, eighteen hundred and seventy-eight, and presented to me, the said John J. Flanagan did de-

clare himself to have been agent of the said party of the second part in making the biddings aforesaid, and did request me to make the deeds and conveyance for said property to the said party of the second part hereto instead of to him the said John J. Flanagan:

Now, therefore, this indenture witnesseth that I, the said Bennington F. Randolph, as such master as aforesaid, under and by virtue of the said writ of fieri facias, and in execution of the power and trust in me reposed, and in consideration of the sum of fifty-one thousand five hundred
374 and eighty dollars to me in hand paid by the said party of the second part, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate, and forever discharge the said party of the second part, his heirs, executors, and administrators, have granted, bargained, sold, assigned, transferred, and conveyed, and by these presents do grant, bargain, sell, assign, transfer, and convey unto the said party of the second part, and to his heirs and assigns, all and singular the said above-described property, with the appurtenances, privileges, and hereditaments thereunto belonging or in any wise appertaining: To have and to hold the same unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit, and behoof forever, in as full, ample, and beneficial a manner as by virtue of the said writ fieri facias I may, can, or ought to convey the same.

In witness whereof I, the said Bennington F. Randolph, as such master as aforesaid, have hereunto set my hand and seal this twelfth day of September, in the year of our Lord eighteen hundred and seventy-eight.

[L. S.] BENNINGTON F. RANDOLPH,
Master in Chancery.

Signed, sealed, and delivered in the presence of—
LINSLY ROWE, of New-Jersey.

STATE OF NEW JERSEY,
Hudson County, ss:

I, Bennington F. Randolph, a master in chancery of the State of New Jersey, do solemnly swear that the property described in the within deed, made by me to Rosewell G. Ralston, was by me sold to , by virtue of a good and subsisting execution, as is herein recited; that the moneys ordered to be made have not been to my knowledge or belief paid or satisfied; that the time and place of the sale of said property was by
375 me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

BENNINGTON F. RANDOLPH.

Sworn before me, one of the masters in chancery of the State of New Jersey, on this twelfth day of September, A. D. 1878; and I, having examined the deed above mentioned, do approve of the same, and order it to be recorded as a good and sufficient conveyance of the property therein described.

LINSLY ROWE, *M. C. C.*

STATE OF NEW JERSEY,
Hudson County, ss:

On this twelfth day of September, in the year of our Lord one thousand

eight hundred and seventy-eight, before me, the subscriber, a master in chancery of said State, personally appeared Bennington F. Randolph, a master in chancery of the State of New Jersey aforesaid, who is, I am satisfied, the grantor in the within indenture named; and I having first made known to him the contents thereof, he did thereupon acknowledge that the signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

LINSLY ROWE, *M. C. C.*

Received and recorded Sept. 16, 1878.

WM. McCARTY, *Clerk.*

STATE OF NEW JERSEY,
County of Morris, ss:

I, Melvin S. Condit, clerk of the county of Morris, do hereby certify that the foregoing is a true copy of the record of a deed given by Bennington F. Randolph, master, &c., to Rosewell G. Ralston, as fully as
376 the same remains in my office in book Z 9 of deeds for said county, on pages 424, &c.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Morristown, this twenty-seventh day of December, A. D. eighteen hundred and seventy-eight.

[L. S.] MELVIN S. CONDIT, *Clerk.*

EXHIBIT B 11.

First mortgage and trust deed.—New Jersey West Line Railroad Company to Theodore F. Randolph and Benjamin G. Clarke, trustees.

This indenture, made the eleventh day of March, in the year of our Lord one thousand eight hundred and seventy, between the New Jersey West Line Railroad Company, a corporation in the State of New Jersey, in the United States of America, party of the first part, and Theodore F. Randolph and Benjamin G. Clarke, of said State, party of the second part: Whereas, pursuant to the power and authority in it vested, the party of the first part has resolved, to enable it to construct its railroad and equip the same, to make and issue a series of three thousand of its bonds, each of one thousand dollars, numbered respectively from one to three thousand, inclusive, to amount in the aggregate to three million dollars, which bonds are to have coupons or warrants thereto annexed for the payment of interest thereon, at the rate of seven per cent. per annum, which said bonds are to be all equally secured, principal and interest, by these pres-
377 ents, which is a deed of trust or first mortgage, which bonds are of like tenor and date, each bearing even date herewith, payable, principal and interest, in gold coin of the United States of America, and in form following:

$1,000.] (No. .) [$1,000.

STATE OF NEW JERSEY.

New Jersey West Line Railroad Company.

UNITED STATES OF AMERICA.

Principal and interest payable in gold coin of the United States of America.

Know all men by these presents that the New Jersey West Line Railroad Company, a corporation by a charter of the State of New Jersey, is indebted to Theodore F. Randolph and Benjamin G. Clarke, or the bearer hereof, in the sum of one thousand dollars in gold coin of the United States of America, which the said company promises to pay to said Theodore F. Randolph and Benjamin G. Clarke, or the bearer hereof, on the first day of May, in the year one thousand nine hundred, at the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually in gold coin of the United States of America, at the city of New York, on the first day of May and November in each year, upon presentation and surrender of the coupons hereto annexed as they severally become due, and in case of any non-payment of any half-yearly installment of interest which shall have become payable, and the coupon therefor shall have been presented and the amount thereof demanded, and the continuance of such default for the period of three months after such presentment of coupon and demand, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust or mortgage securing the same. This bond is one of a series of three thousand bonds, each for one thousand dollars, of like tenor and date, numbered from 1 to 3000, inclusive, amounting in the aggregate to three million dollars, the payment of each and all of which bonds is secured equally by a deed of trust or first mortgage, bearing date the eleventh day of March, one thousand eight hundred and seventy, duly executed and
378 delivered by the said railroad company to said Theodore F. Randolph and Benjamin G. Clarke, trustees, covering the railway of said company and all the appurtenances thereto belonging, together with the franchises, powers, and privileges possessed by said company by law as a corporation, also the rolling stock and equipment in the said deed of trust or mortgage mentioned.

This bond shall pass by delivery, or it may be registered by its owner in the books of the company, at the office of said company. After a registration of ownership certified thereon by the transfer agent of the company, no transfer of this bond shall be valid except upon the books of the company, unless the last transfer shall have been to bearer and transferability by delivery thereby restored; but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of the holder.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon, and signed by the trustees named above, or the survivor of them, or their successors as such trustees.

In witness whereof the said company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of the presi-

dent and secretary, and has also caused the coupons hereto annexed to be signed by its treasurer, this eleventh day of March, in the year one thousand eight hundred and seventy.

[L. S.]

, *Pres't.*

, *Sec'y.*

[Form of coupon or interest warrant.]

New Jersey West Line Railroad Company.

STATE OF NEW JERSEY, UNITED STATES OF AMERICA.

Warrant for thirty-five dollars for six months' interest due on first-mortgage bond, No. , of the New Jersey West Line Railroad Company, for $1,000. This interest is payable in gold coin in New York City, on the day of .

$35.]

, *Treas.*

379 Now, therefore, this indenture witnesseth that, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party of the second part, the receipt whereof is hereby acknowledged by the party of the first part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof, and of the coupons or interest warrants thereto annexed, the party hereto of the first part hath granted, bargained, sold, assigned, transferred, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, transfer, convey, and confirm, unto the party of the second part, as joint tenants and not as tenants in common, and unto the survivor of them and their successors and assigns, all and singular the railroad of the New Jersey West Line Railroad Company, the party of the first part hereto, and all the appurtenances thereto belonging, acquired and to be acquired, constructed and to be constructed, throughout and along the entire main line of said company's railroad from the eastern terminus of said railroad at the city of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said railroad at the Pennsylvania State line, including all the lands and real estate acquired and that shall be acquired by the said company, on which the said main line of the said company's railroad is by law authorized to be constructed; also the bridge across the Delaware River and the tracks thereon, and all the tracks bridges, viaducts, and fences on and that shall be on and belonging to said main line of said railroad, together with all the franchises, powers, and privileges, to own, obtain, construct, operate, manage, and maintain the said main line of railroad possessed by the said company as a corporation; also the depots, station-houses, engine-houses, car-houses, freight-houses, water-stations, turn-tables, machine and other buildings and structures on or along and adjacent to said main line of railroad, belonging to or that shall be acquired by said company, or that shall be used on or along said main line of railroad of said company, together with the land on which the same are or shall be erected, acquired, or that shall be acquired
380 by said company; and all the machinery, tools, implements, and materials for constructing, operating, repairing, or replacing the said line of railroad or any part thereof; and the rights of way, road-bed, and other grounds forming and to form part of and belonging or to belong

to the said line of railroad, embracing as to the parcels and items of property herein before specified as conveyed hereby such and such parts thereof as have been heretofore acquired by, constructed, or placed in the possession of the said company; as also such as shall be hereafter acquired by or constructed or placed in the possession of the said company, and which forms and constitutes, or shall form and constitute, the said main line of railroad and lands, buildings, and structures thereto belonging; also all the locomotives, tenders, cars, and other rolling stock or equipment which by virtue of the contract for the construction of said main line of railroad and equipment thereof, and bridge across the Delaware River, shall be placed on the said railroad, or furnished to, or procured, or that shall be procured, by the said company for that purpose; and all the property, franchises, rights, and things of whatsoever name or nature now held or acquired, or which shall hereafter be held or acquired, by the party of the first part hereto, or its successors, pertaining to the said main line of railroad or the equipment thereof, together with all and singular the tenements, hereditaments, and appurtenances to the said main line of railroad, lands, and premises, or either thereof, belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the party of the first part hereto, of, in, and to the same and every part and parcel thereof, with the appurtenances:

To have and to hold the above mentioned and described railroad, bridges, real estate, property, and premises with the appurtenances, unto the party of the second part, as joint tenants and not as tenants in common, and to
381 the survivor of them and their successors and assigns as joint tenants and not as tenants in common, as aforesaid, to the only proper use, benefit, and behoof of the party of the second part, and the survivor of them, and their successors and assigns as joint tenants and not as tenants in common, as aforesaid, forever, in trust nevertheless for the purposes herein expressed, to wit:

ARTICLE FIRST.—Until default shall be made by the party of the first part, its successors or assigns, in the payment in gold coin, as aforesaid, of the principal or interest, or some part thereof, of the said bonds, or some one of them, when due, and the coupon or coupons for interest shall have been presented and the amount thereof demanded, and the continuance of such default for the period of three months after such presentment of the coupon or coupons and demand, the party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said railroad, with its equipment and appurtenances, and also the bridges, real estate, lands, and premises, property, and franchises herein before described and hereby mortgaged, and to receive, take, and use the tolls, incomes, revenues, rents, issues, and profits thereof, and of every part and parcel thereof, in the same manner and with the same effect as if this mortgage had not been made.

ARTICLE SECOND.—In case default or failure shall be made or occur in the payment in gold coin, as aforesaid, of any interest on any of the said bonds according to the tenor thereof, or of the coupons thereto annexed, or any or either of them, when the same shall become due, and the coupon or

coupons for such interest shall have been presented and the amount thereof demanded, and such default or failure shall continue for the period of three months after such presentment of the coupon or coupons aforesaid and demand, or in case of default or failure in the payment in gold coin, as aforesaid, of the principal or any part thereof of said bonds, or any of them, when the same shall become due and be presented for payment, and such default or failure shall continue for the period of three months,
382 then and in either of such cases it shall be lawful for the said trustees, Theodore F. Randolph and Benjamin G. Clarke, or the survivor of them or their successors, personally or by their or his attorney or agents, the said default or failure then still existing, upon their written request of the holder or holders of one hundred and fifty bonds issued by said company, and secured by and under this mortgage and deed of trust, on which by the non-payment of interest or principal such default or failure shall continue to exist, or on their or his own motion to enter into and upon and take possession of all and singular the railroad, bridges, real estate, lands, property, and premises, rolling stock, and equipment hereby conveyed and mortgaged or intended to be, and of each and every part thereof, without any let or hindrance of or from the party of the first part, or its successors, and to have, hold, possess, occupy, use, employ, and enjoy the same, and to operate by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railroad and rolling stock and equipment thereof hereby mortgaged, and conduct the business thereof, and to make from time to time all repairs and replacements thereof, and of any part thereof, and of the bridges and other property connected therewith, and such useful alterations, additions, and improvements thereof and thereto as may seem to them or him in their or his discretion judicious, and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the said railroad, bridges, real estate, lands, property, and premises, rolling stock, and equipment, and of every part and parcel thereof, and after deducting the expenses of operating the same and conducting the business thereof, and of repairs and replacements, alterations, additions, and improvements, and all the expenses incurred in the holding and management of the same, and of every part and parcel thereof, and all payments which may be made for advances of any money or moneys, or for taxes or assessments upon the said premises, or any part or parcel thereof, or against the said company, or against said trustees as such, as well as just compensation for their or his services as trustees or trustee, and for the
383 services and reasonable charges of such attorneys and counsel as may have been by them or him employed, and any and all costs which may have been incurred, to apply the moneys arising as aforesaid to the payment of interest on the said bonds, the interest on which shall be past due, in the order in which such interest shall have become due, ratably to the persons holding the coupons evidencing the right to such interest; and after paying all interest which shall have become due to apply the said moneys to the payment of the principal of such of said bonds secured hereby as may then be due and unpaid, ratably and without discrimination or preference; and if, after satisfaction of said interest and principal, a surplus shall remain, to pay over such surplus to the company, its successors or assigns, or as any court of competent jurisdiction shall order.

ARTICLE THIRD.—In case default be made as aforesaid, and shall continue for the period of six months after the presentment of any coupon or

coupons aforesaid past due, and demand of the payment of the interest on any of said bonds mentioned in said coupon or coupons, or in case such default be in the payment of the principal secured by any of said bonds or any part thereof, and shall continue for the period of six months after such principal shall become due, then, in either case, it shall likewise be lawful for the said trustees, or the survivor of them, or their successors, after entry as aforesaid, or other entry, or without entry, personally or by their or his attorney or attorneys, agent or agents, to sell and dispose of all and singular the railroad, bridges, real estate, lands, property, and premises, rolling stock and equipment, franchises, rights, and powers hereby conveyed or intended so to be, at public auction in the city of Newark, in the county of Essex, in the State of New Jersey, or in Jersey City, in the county of Hudson, in said State of New Jersey, as the said trustees or the survivor of them or their successors shall designate, and at such time as they or he may appoint, having, after the expiration of said period of six months, first given notice of the place and time of such sale by advertisement published not less than three times a week for two months in one or
384 more newspapers published in the city of New York, and also in two or more newspapers published in New Jersey, and in whatever way and wherever else required by law; and to adjourn the said sale from time to time as often as in their or his discretion may be for the best interest and advantage of the holders of bonds and coupons or interest warrants secured thereby; and if there be an adjournment or adjournments, to make the sale aforesaid without further notice by advertisement, unless notice of adjournment by advertisement should be required by law, then such notice to be as required by law, the said sale to be in case of adjournment at the time and place to which any adjournment of the same may be made; and to make and deliver to the purchaser or purchasers of the said property and premises good and sufficient deed or deeds in the law in fee-simple, conveying thereby the whole of said main line of railroad, bridges, real estate, lands, property, and premises, with the said franchises, rights, and powers of said corporation, and the said rolling stock and equipment, and all the appurtenances to the said property, or any part thereof, belonging; which sale and conveyance made as aforesaid shall be a perpetual bar both in law and equity against the party of the first part, its successors and assigns, and all other persons claiming or to claim the said railroad, bridges, real estate, lands, property, and premises, franchises, rights, and powers, rolling stock and equipment, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns, which said sale and conveyance shall vest the right, title, estate, interest, property, and possession of, in, and to the said premises, franchises, and equipment wholly and absolutely in the purchaser or purchasers; and after deducting from the proceeds of such sale just allowances for all expenses thereof, and for attorney's and counsel fees, and for costs, taxes, assessments and for all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or either of them, or advances made for the benefit of the trust in respect to the said railroad, bridges, real estate, lands, property, and premises, rolling stock and equipment, or any part or parcel thereof, or in respect to
385 the business of the trust hereby created, or in operating or maintaining the said railroad or bridges or equipment, or any part of

either, or anything appertaining thereto, or in managing the business thereof, or in taking charge or control of the said property and business, or any part thereof, and in arranging for and completing the sale aforesaid, and all the payments which may have been made by the said trustees, or the survivor of them or their successors, or either of them, in the execution of the trust and in the discharge of their or his duty as trustees or trustee, as well as compensation for their or his own services, to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but ratcably to the aggregate amount of such unpaid principal and accrued and unpaid interest, but always so that if of any of the coupons or interest warrants then past due annexed to all of said bonds which came due at the same date a part only shall then have been paid in part or in full, then the others of said coupons or interest warrants which came due at the same date with those thus paid in part or in full, which shall not then have been paid in part or in full, shall be first paid to an amount which will make the payments of the interest on all the said bonds secured by this mortgage or deed of trust to be in full of interest to the same date, in order and to the intent that the security for and payment of all the said bonds shall be perfectly equal, without any preference in favor of one or the other either as to principal or interest; and if, after the payment of the principal and interest of said bonds in full, a surplus shall remain, to pay over such surplus to the said company, or render the same and account therefor and pay the same or so much thereof as may be required to the person or persons who may be entitled thereto under or by virtue of any second mortgage that may be given by the party hereto of the first part or its successors on or covering the estate, property, franchises,
386 and rights covered by this mortgage or deed of trust, which second mortgage or deed of trust, if so given, is to be distinct from, subject to, and second in the order of priority to this mortgage or deed of trust, the right to give, make and execute a valid second mortgage or deed of trust, which shall be a lien subsequent to this mortgage or deed of trust, on all the said main line of railroad, bridges, real estate, lands, and premises, rolling stock, equipment, franchises, and other property and rights embraced in this mortgage or deed of trust is hereby reserved, but only so that it shall be operative on any remainder or equity of redemption or surplus, after the complete execution of the trust hereby created and the payment in full by the said company or its successors, or by a sale and conveyance in fee-simple, by the said trustees or the survivor of them or their successors as aforesaid, or by other means, of the principal and interest secured by this mortgage and deed of trust; and balance of said surplus over what may be required to pay any second mortgage, to be paid to the said company; or the said surplus shall be rendered and accounted for by the said trustees or the survivor of them or their successors as any court of competent jurisdiction shall order or decree, it being expressly understood that in no case shall any advantage be taken of any valuation, appraisement, or stay or extension laws by the party of the first part or its successors, nor of any injunction or stay of proceedings, or any process to be applied for by the party of the first part or its successors, to prevent the

entry, possession, or use of said main line of railroad and premises and property, as provided in article second of this instrument, or to prevent such entry and sale as aforesaid; and that such second mortgage or deed of trust, if given or made hereafter, shall in no way interfere with or abridge the full and complete effect and operation of this mortgage or deed of trust, or the rights and security of the holders of bonds and of coupons or interest warrants thereto annexed secured by this instrument; and that in case of a sale and conveyance by said trustees or the survivor of them or their successors, by virtue of and pursuant to this mortgage or deed of trust, the purchaser or purchasers, by virtue of such sale and con-
387 veyance, shall take the said main line of railroad, real estate, lands, property, premises, franchises, and rights conveyed by this mortgage or deed of trust free and clear of any claim or lien under or by virtue of any second mortgage or deed of trust that may be made as aforesaid, but such second mortgage or deed of trust shall operate on and be a claim against and lien upon the said surplus.

And it is hereby declared and agreed that the receipt of the said trustees, or of such one or more of them as shall make such sale and conveyance, for the purchase-money or for securities therefor, whether mentioned in said conveyance or such receipt be separate, shall be a sufficient discharge to the purchaser or purchasers of the estate, property, and premises, franchises and rights, which shall be sold and conveyed as aforesaid, for his or their purchase-money, and that such purchaser or purchasers, his or their executors or administrators, or any claiming under him or them, shall not, after the payment of said purchase-money and having such receipt therefor, whether expressed in the conveyance to such purchaser or purchasers or in a separate writing, be liable or under obligation to see to the application of such purchase-money, or any part or portion thereof, to, upon, or for the trusts or purposes of these presents, or any or either of them, or be in any manner whatever answerable for any loss, misapplication, or non-application or misuse of such purchase-money, or any part or portion thereof, or be obliged to inquire into, or be affected by, any question as to the necessity, expediency, or authority of or for such sale.

ARTICLE FOURTH.—In case default shall be made in the payment of any half year's interest on any of the said bonds, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented for payment and the payment of the interest therein specified having been demanded, and that such default shall continue for the space or period of three months after the interest expressed in said coupon shall have become due, and from and after the coupon shall have
388 been presented and the payment thereof demanded as aforesaid, then and thereupon the principal of all the said bonds shall, at the election of the trustees, become immediately due and payable.

ARTICLE FIFTH.—The said trustees or the survivor of them or their successors shall also, in their or his discretion, have full power to convey or release, upon the written request of the party of the first part, any lands acquired or held for the purposes of stations, depots, shops, bridges, or for other purposes than as part of the width of land authorized by law for said main line of railroad, occupied or to be occupied by the track from the city of Newark to the Pennsylvania State line, which lands, not part of that occupied by or intended for the track, in their or his judgment

either, or anything appertaining thereto, or in managing the business thereof, or in taking charge or control of the said property and business, or any part thereof, and in arranging for and completing the sale aforesaid, and all the payments which may have been made by the said trustees, or the survivor of them or their successors, or either of them, in the execution of the trust and in the discharge of their or his duty as trustees or trustee, as well as compensation for their or his own services, to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest, but always so that if of any of the coupons or interest warrants then past due annexed to all of said bonds which came due at the same date a part only shall then have been paid in part or in full, then the others of said coupons or interest warrants which came due at the same date with those thus paid in part or in full, which shall not then have been paid in part or in full, shall be first paid to an amount which will make the payments of the interest on all the said bonds secured by this mortgage or deed of trust to be in full of interest to the same date, in order and to the intent that the security for and payment of all the said bonds shall be perfectly equal, without any preference in favor of one or the other either as to principal or interest; and if, after the payment of the principal and interest of said bonds in full, a surplus shall remain, to pay over such surplus to the said company, or render the same and account therefor and pay the same or so much thereof as may be required to the person or persons who may be entitled thereto under or by virtue of any second mortgage that may be given by the party hereto of the first part or its successors on or covering the estate, property, franchises,
386 and rights covered by this mortgage or deed of trust, which second mortgage or deed of trust, if so given, is to be distinct from, subject to, and second in the order of priority to this mortgage or deed of trust, the right to give, make, and execute a valid second mortgage or deed of trust, which shall be a lien subsequent to this mortgage or deed of trust, on all the said main line of railroad, bridges, real estate, lands, and premises, rolling stock, equipment, franchises, and other property and rights embraced in this mortgage or deed of trust is hereby reserved, but only so that it shall be operative on any remainder or equity of redemption or surplus, after the complete execution of the trust hereby created and the payment in full by the said company or its successors, or by a sale and conveyance in fee-simple, by the said trustees or the survivor of them or their successors as aforesaid, or by other means, of the principal and interest secured by this mortgage and deed of trust; and balance of said surplus over what may be required to pay any second mortgage, to be paid to the said company; or the said surplus shall be rendered and accounted for by the said trustees or the survivor of them or their successors as any court of competent jurisdiction shall order or decree, it being expressly understood that in no case shall any advantage be taken of any valuation, appraisement, or stay or extension laws by the party of the first part or its successors, nor of any injunction or stay of proceedings, or any process to be applied for by the party of the first part or its successors, to prevent the

entry, possession, or use of said main line of railroad and premises and property, as provided in article second of this instrument, or to prevent such entry and sale as aforesaid; and that such second mortgage or deed of trust, if given or made hereafter, shall in no way interfere with or abridge the full and complete effect and operation of this mortgage or deed of trust, or the rights and security of the holders of bonds and of coupons or interest warrants thereto annexed secured by this instrument; and that in case of a sale and conveyance by said trustees or the survivor of them or their successors, by virtue of and pursuant to this mortgage or deed of trust, the purchaser or purchasers, by virtue of such sale and con-
387 veyance, shall take the said main line of railroad, real estate, lands, property, premises, franchises, and rights conveyed by this mortgage or deed of trust free and clear of any claim or lien under or by virtue of any second mortgage or deed of trust that may be made as aforesaid, but such second mortgage or deed of trust shall operate on and be a claim against and lien upon the said surplus.

And it is hereby declared and agreed that the receipt of the said trustees, or of such one or more of them as shall make such sale and conveyance, for the purchase-money or for securities therefor, whether mentioned in said conveyance or such receipt be separate, shall be a sufficient discharge to the purchaser or purchasers of the estate, property, and premises, franchises and rights, which shall be sold and conveyed as aforesaid, for his or their purchase-money, and that such purchaser or purchasers, his or their executors or administrators, or any claiming under him or them, shall not, after the payment of said purchase-money and having such receipt therefor, whether expressed in the conveyance to such purchaser or purchasers or in a separate writing, be liable or under obligation to see to the application of such purchase-money, or any part or portion thereof, to, upon, or for the trusts or purposes of these presents, or any or either of them, or be in any manner whatever answerable for any loss, misapplication, or non-application or misuse of such purchase-money, or any part or portion thereof, or be obliged to inquire into, or be affected by, any question as to the necessity, expediency, or authority of or for such sale.

ARTICLE FOURTH.—In case default shall be made in the payment of any half year's interest on any of the said bonds, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented for payment and the payment of the interest therein specified having been demanded, and that such default shall continue for the space or period of three months after the interest expressed in said coupon shall have become due, and from and after the coupon shall have
388 been presented and the payment thereof demanded as aforesaid, then and thereupon the principal of all the said bonds shall, at the election of the trustees, become immediately due and payable.

ARTICLE FIFTH.—The said trustees or the survivor of them or their successors shall also, in their or his discretion, have full power to convey or release, upon the written request of the party of the first part, any lands acquired or held for the purposes of stations, depots, shops, bridges, or for other purposes than as part of the width of land authorized by law for said main line of railroad, occupied or to be occupied by the track from the city of Newark to the Pennsylvania State line, which lands, not part of that occupied by or intended for the track, in their or his judgment

shall not be necessary for use in connection with the said railroad, or any lands not occupied by the track which may become disused by reason of the change of location of any station or station-house, depot, shop, bridge, or other building or structure connected with the said railroad or any part thereof, and any lands not occupied by the track adjacent to such station or station-house, depot, shop, bridge, or other building or structure, which the company may deem it expedient to *discuss* or abandon by reason of such change, and to consent to any such change or any other changes in the location of the track, depots, buildings or other structures, or any or either of them, which in their or his judgment shall have become expedient or necessary to increase the facilities of said main line of railroad as a through railroad from the city of Newark to the Pennsylvania State line, and to make and deliver the instruments necessary or proper to carry the same into effect, and said conveyance or release shall operate to release said land mentioned therein from this mortgage or deed of trust as a lien; but they are not to convey or release, under or by virtue of this article, any part of the permanent main line of railroad through from the city of Newark to the Pennsylvania State line, or the land for the width authorized by law and necessary for the track. Any lands which may have been acquired for perma-
389 nent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company from time to time to dispose of, according to its discretion, such portions of the equipment, machinery, and implements at any time held or acquired for the use of the said railroad as may have been unfit for such use, replacing the same by new or other, which shall be conveyed by the said company to the trustees and made subject to the lien and operation and held upon the trusts of these presents.

ARTICLE SIXTH.—It is hereby provided always, nevertheless, and it is the true intent and meaning of these presents, that if the party of the first part shall well and truly pay or cause to be paid the principal of the said bonds when the same shall become due, in coin as aforesaid, and interest thereon when the same shall have become payable, and the coupon or coupons therefor shall have been presented and payment thereof demanded according to the tenor of said bonds and of the coupons or interest warrants thereto annexed, and according to the true intent and meaning of said bonds and said coupons or interest warrants thereto annexed, and of these presents, said interest to be paid in gold coin, then, and in that case, upon the payment of the principal and all the interest aforesaid, the estate, right, title, and interest of the said parties of the second part, trustees as aforesaid, the survivor of them and their successors, in the trusts hereby created, and these presents, as well as the said bonds and coupons, or interest warrants issued therewith, shall cease, determine, and become null and void, anything herein to the contrary notwithstanding; otherwise the same shall be and remain in full force and virtue.

ARTICLE SEVENTH.—It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee for the time being, whether original or new, and whenever a vacancy shall exist, to mean the surviving or con-
390 tinuing trustee; and such trustee shall, during such vacancy, be competent to exercise all the powers by these presents granted to

or conferred upon the parties hereto of the second part. And it is mutually agreed by and between the parties hereto that neither of the said trustees or their successors, or either of them, shall be in any manner responsible for any default or misconduct of any other of them; that the said trustees, and each of them, and their successors, and each of them, shall be entitled to just compensation for all services which they, or either of them, may hereafter render in their or his trust, and to the repayment to them of all expenses incurred by them, including counsel and attorney's fees paid by them in connection with the trust hereby created, the same to be paid by the company or out of the income of the property, and for that purpose they or he may at any time apply to the courts, or any of them, without notice to any person except to the party hereto of the first part, its successors, or assigns; that either of said trustees or any successor may discharge himself of the trust created by these presents by notice in writing to the said company and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as may be accepted, by written consent, as adequate notice, and upon the due execution of the conveyances hereinafter required.

That in case at any time hereafter either of the said trustees, or any trustees or trustee hereafter appointed, shall die or resign or become incapable or unfit to act in the said trust, a successor or successors to such trustee or trustees shall be appointed by the surviving or continuing trustee, with the consent of the company; and the trustee or trustees so appointed, with the trustee surviving or continuing, shall thereupon become vested with all and singular the powers, authorities, and estates granted to or conferred upon the parties of the second part as trustees by these presents, and all the rights and interests requisite to enable them or him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the pur-
391 pose of assuring the legal estate in the premises jointly with himself to the trustee so appointed; and upon the death, resignation, or removal by any court of competent jurisdiction of any trustee, or an appointment of another in his place, all the powers and authorities of the one so dying, resigning, or removed by virtue hereof shall cease, and all the estate, right, title, and interest in the said property, premises, franchises, and powers of any trustee so dying, resigning, or removed shall, if there be a cotrustee surviving or continuing in office, wholly cease and determine; but the said trustee so resigning or removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trusts; provided nevertheless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint, in the manner herein before provided, a successor in any vacancy which may have happened in said trust, application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or if the trust be wholly vacant by holders of bonds secured hereby, or any of them, on giving notice in writing to the com-

pany, or in default of such application by any bondholder or bondholders, then by the said company making application to the court of chancery of the State of New Jersey, or to any court of competent jurisdiction, for the appointment of a new trustee or trustees; and in case of application as aforesaid by the said company, such notice of the time and place for the appointment of a new trustee or new trustees shall be given by publication thereof in such newspapers published in the city of New York and in the State of New Jersey, and for such length of time as the court shall direct.

And the party of the first part for itself, its successors and assigns, in consideration of the premises, and of one dollar to it duly paid, the receipt whereof is hereby acknowledged, hereby covenants and agrees
392 to and with the party hereto of the second part, and the survivor of them and their successors and assigns, that whenever and as often as the party of the first part, its successors or assigns, shall hereafter acquire any lands for use as part of the width allowed by law to be held and owned by said company for said main line of railroad, or to be used for bridges, depots, station-houses, or other buildings, or any equipment, or any other property or things of whatever name or nature for use as part of said main line of railroad, or for bridges, depots, station-houses, or other buildings adjoining thereto, or any rights or privileges of the company which shall result from any addition or chartered rights of the company in the ownership or management of the said main line of railroad, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same and every part and parcel thereof, and also all the said main line of railroad of the party of the first part, and the bridges, buildings, houses, and other structures and rolling stock and equipment connected with the said main line of railroad, and forming part thereof, contracted for, constructed, or that may be contracted for by, constructed for, or furnished to, the company, upon and subject to the trusts of this indenture; but this deed of trust or mortgage is not to cover or affect and does not include any branch railroad that may be built to connect with said main line of railroad, or any lands temporarily held by said company not a part of the width allowed by law for the said main line of railroad and not required for bridges, depots, buildings, and other structures contiguous to said main line of railroad.

And the said party of the first part, for itself, its successors, and assigns, in consideration of the premises and of one dollar to it duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the party of the second part, and the survivor of them and their successors and assigns, that the said company and its successors and assigns shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees under this indenture, execute, deliver, and acknowledge all such
393 further deeds, conveyances, and assurances in the law for the better assuring unto the parties of the second part, the survivor of them and their successors as trustees or trustee, upon the trust herein expressed, the said main line of railroad and the said real estate, lands, bridges, houses, and other structures, rolling stock, equipment, franchises, property, and things which are herein before referred to as conveyed by this deed of trust or mortgage, or which the company may hereafter for any reason become entitled to, or may acquire for, or for the use of, said main line of

railroad or the bridges or buildings adjacent thereto, and also all franchises and corporate rights which may hereafter be acquired by the said party of the first part, its successors or assigns, to facilitate the ownership, use, or management of said main line of railroad with the appurtenances, as by the said trustees or their counsel learned in the law shall be reasonably advised, devised, or required, but always so that if no further or other deeds, conveyances, or assurances should be made, yet that the said property of every kind so as aforesaid a part of said main line of railroad, or lands for bridges, buildings, or structures adjoining the same, including the franchises, shall as well all thereof now acquired as that shall hereafter be acquired by the party hereto of the first part, its successors and assigns, be held, acquired, received, and possessed by the party hereto of the first part, its successors and assigns, by virtue of this deed of trust or mortgage, subject to the trusts in and by this instrument created, and subject to the estate, right, and interest of said trustees and the survivor of them and their successors, in and to the said property of every kind and franchises now acquired or that shall hereafter be acquired by the said company, its successors and assigns, herein before referred to as embraced in and intended to be covered by this instrumem.

And it is mutually agreed between the parties hereto, and the said trusts are accepted and created with the distinct understanding, that the party hereto of the second part, and the survivor of them and their successors in said trusts, shall be accountable, liable, or responsible for reason-
394 able care and diligence only in the performance of the trusts hereby created, and in the management of the said estate and property, in like manner as a bailee without reward, and that they shall not nor shall either of them be under obligation by virtue of anything herein to do any act or require it to be done which shall require an advance, or outlay, or expenditure of money or funds, until the money or funds necessary to be advanced, laid out, or expended shall be furnished or paid to them or the survivor of them or their successors, which money or funds so paid or furnished to them necessary to be advanced, laid out, or expended in the business or duties connected with said trusts shall be deemed part of the expenses to be paid to the person or persons who may have advanced the same out of monies which by virtue of said trusts shall come to the hands of said trustees or the survivor of them or their successors; and it is mutually understood and agreed between the parties hereto, and the trusts aforesaid are hereby created and the appointment of trustees accepted with the further distinct understanding, that the party hereto of the second part, the survivor of them and their successors, shall not nor shall either of them be accountable, liable, or responsible for the act or acts of any attorney, agent, depositary, employee, or of any other person or persons whatever employed by them or him, or for any act which shall be done pursuant to the advice of counsel, or done and performed in good faith, when such attorney, agent, depositary, employee, counsel, or any other person or persons employed by them or him shall have been selected with reasonable discretion.

In witness whereof the said party of the first part, the New Jersey West Line Railroad Company, has caused its corporate seal to be hereto affixed and the same to be attested by the signature of John H. Lyon, its president, who is duly authorized to do so by a resolution of said corporation, and the same is also attested by Beverley C. Sanders, the company's secretary.

And the said Theodore F. Randolph and Benjamin G. Clarke,
395 the party of the second part, have hereto set their hands and seals to evidence their acceptance of the trust hereby created, the day and year first above written.

[SEAL.] JOHN H. LYON, *President.*

Attest:

BEVERLEY C. SANDERS, *Secretary.*

THEO. F. RANDOLPH, [L. S.]
B. G. CLARKE, [L. S.]
Trustees.

Sealed and delivered in the presence of, who also witnessed the affixing United States internal-revenue stamps to the amount of $3,000, which were cancelled—

WILL J. LYON.

STATE OF NEW JERSEY,
Hudson County, ss:

Will J. Lyon, of full age, of Jersey City, Hudson County, New Jersey, being duly sworn according to law, on his oath says, that he is well acquainted with the common seal of the New Jersey West Line Railroad Company, the grantor named in the foregoing indenture; that the seal affixed thereto, attested by the signatures of the president and secretary of said company, is the common seal of said company; that this deponent was present at the execution of said indenture, on the day of the date thereof, by the grantor at Jersey City, Hudson County, New Jersey, and saw John H. Lyon, who is the president of said company, as such president seal said indenture by affixing the said common seal thereto, and sign, seal, and deliver the said deed of trust and mortgage as the voluntary act and deed of the said company; and this deponent saw the secretary aforesaid, Beverly C. Sanders, attest said seal and sign his name to said indenture; and they respectively first stated that the said company knew and were informed of the contents thereof, and the contents of the same
396 were made known to them in the presence of this deponent prior to the execution thereof, and this deponent thereupon signed his name as the subscribing witness to such execution thereof; and this deponent further says that he also saw Theodore F. Randolph and Benjamin G. Clarke, the party of the second part to the foregoing indenture of mortgage and deed of trust, the contents thereof having first been made known to them, sign, seal, and deliver the same as their voluntary act and deed, and this deponent signed his name as the subscribing witness to such execution by them; and this deponent also saw $3,000 (three thousand dollars) in value of United States internal-revenue stamps affixed to the said indenture and duly cancelled at the same time of the execution of said indenture.

WILL J. LYON.

Sworn and subscribed before me, at Jersey City, Hudson County, New Jersey, March 11, 1870.

BENNINGTON F. RANDOLPH,
Master in Chancery of New Jersey.

No. 6913.

Received in the clerk's office of the county of Union, March fifteenth, A. D. 1870, at 1 o'clock p. m., and recorded in book eleven of mortgages for said county, on pages 521, &c.

HENRY R. CARMON, *Clerk.*

Received in the clerk's office of the county of Somerset, on the fifteenth day of March, A. D. eighteen hundred and seventy, at 3.47 p. m., and recorded in book C No. 2 of mortgages for Somerset County, on page 576, &c., &c.

WILLIAM ROSS, JR., *Clerk.*

397 Received in the Morris County clerk's office, March fifteenth, A. D. eighteen hundred and seventy, and recorded at length in book S 2 of mortgages, on pages 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, and 182.

[Compared.]

RICHARD SPEER, *Clk.*

Received in the register's office on the fifteenth day of March, A. D. 1870, at fifty-five minutes after eleven o'clock in the forenoon, and recorded in book L 5 of mortgages for Essex County, N. J., on pages 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494.

JULIUS STAPFF, *Reg.*

398 *Exhibit on the part of the complainant.*

United States circuit court. In equity.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et als., defendants.

Certified copy of the book of registry of bonds.

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of Somerset, acknowledge themselves to owe to bearer one thousand dollars, which sum they promise to pay the holder hereof at the American Exchange National Bank, in the city of New York, six years after the date hereof, and also interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of July and January in each year, until
399 the said principal sum shall be paid, on the presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township, in pursuance of an act entitled "An act to

authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

In testimony whereof the undersigned, commissioners of the said Township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed, commissioned, and sworn, have hereunto set our hands and seals the first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Bond No. 1, $1,000	Six years' coupons attached.....	12
" " 2, $1,000		12
" " 3, $1,000		12
" " 4, $1,000		12
" " 5, $1,000	Seven years' coupons attached.....	14
" " 6, $1,000		14
" " 7, $1,000		14
" " 8, $1,000	Eight years' coupons attached.....	16
" " 9, $1,000		16
" " 10, $1,000		16
" " 11, $1,000	Nine years' coupons attached.....	18
" " 12, $1,000		18
" " 13, $1,000		18
" " 14, $1,000	Ten years' coupons attached.....	20
" " 15, $1,000		20
" " 16, $1,000		20
" " 17, $1,000		20
400 Bond No. 18, $1,000	Eleven years' coupons attached.....	22
" " 19, $1,000		22
" " 20, $1,000		22
" " 66, $500	Six years' coupons attached.....	12
" " 67, $500		12
" " 68, $500		12
" " 69, $500		12
" " 70, $500	Seven years' coupons attached.....	14
" " 71, $500		14
" " 72, $500		14
" " 73, $500		14

"	"	146, $100		12
"	"	147, $100		12
"	"	148, $100		12
"	"	149, $100		12
"	"	150, $100		12
"	"	151, $100	Six years' coupons attached.....	12
"	"	152, $100		12
"	"	153, $100		12
"	"	154, $100		12
"	"	155, $100		12
"	"	156, $100		12
"	"	157, $100		14
"	"	158, $100	Seven years' coupons attached	14
"	"	159, $100		14

The above-described bonds registered January 18, 1869.

WILLIAM ROSS, JR., *Clerk.*

BERNARDS TOWNSHIP.

Bond	No.	21, $1,000		24
"	"	22, $1,000	Twelve years.....	24
"	"	23, $1,000		24
"	"	24, $1,000		24
"	"	25, $1,000	Thirteen years.....	26
"	"	26, $1,000		26
401 Bond	No.	74, $500		16
"	"	75, $500	Eight years	16
"	"	76, $500		16
"	"	77, $500		16
"	"	78, $500		18
"	"	79, $500	Nine years	18
"	"	80, $500		18
"	"	81, $500		18

The above-described bonds were registered September 4th, 1869.

WILLIAM ROSS, JR., *Clerk.*

BERNARDS TOWNSHIP, *October* 12, 1869.

Bond	No.	27, $1,000.	Thirteen years.....	26
"	"	28, $1,000		28
"	"	29, $1,000	Fourteen years	28
"	"	30, $1,000		28
"	"	31, $1,000		30
"	"	32, $1,000	Fifteen years.....	30
"	"	33, $1,000		30

	"	"	34,	$1,000	Sixteen years — 32
	"	"	35,	$1,000	32
	"	"	36,	$1,000	32
	"	"	37,	$1,000	32
	"	"	38,	$1,000	Seventeen years — 34
	"	"	39,	$1,000	34
	"	"	40,	$1,000	34
	"	"	41,	$1,000	Eighteen years — 36
	"	"	42,	$1,000	36
	"	"	43,	$1,000	36
	"	"	44,	$1,000	Nineteen years — 38
	"	"	45,	$1,000	38
	"	"	46,	$1,000	38
402	Bond	No.	82,	$500	Ten years — 20
	"	"	83,	$500	20
	"	"	84,	$500	20
	"	"	85,	$500	20
	"	"	86,	$500	Eleven years — 22
	"	"	87,	$500	22
	"	"	88,	$500	22
	"	"	89,	$500	22
	"	"	90,	$500	Twelve years — 24
	"	"	91,	$500	24
	"	"	92,	$500	24
	"	"	93,	$500	24
	"	"	94,	$500	Thirteen years — 26
	"	"	95,	$500	26
	"	"	96,	$500	26
	"	"	97,	$500	26
	"	"	98,	$500	Fourteen years — 28
	"	"	99,	$500	28
	"	"	100,	$500	28
	"	"	101,	$500	28
	"	"	102,	$500	Fifteen years — 30
	"	"	103,	$500	30
	"	"	104,	$500	30
	"	"	105,	$500	30
	"	"	106,	$500	Sixteen years — 32
	"	"	107,	$500	32
	"	"	108,	$500	32
	"	"	109,	$500	32

	" "	110,	$500	Seventeen years	34
	" "	111,	$500		34
	" "	112,	$500		34
	" "	113,	$500		34
	" "	114,	$500	Eighteen years	36
	" "	115,	$500		36
	" "	116,	$500		36
	" "	117,	$500		36
	" "	118,	$500	Nineteen years	38
	" "	119,	$500		38
	" "	120,	$500		38
	" "	121,	$500		38
403	Bond No.	122,	$500,	Twenty years	40
	" "	160,	$100	Seven years	14
	" "	161,	$100		14
	" "	162,	$100		14
	" "	163,	$100		14
	" "	164,	$100		14
	" "	165,	$100		14
	" "	166,	$100		14
	" "	167,	$100		14
	" "	168,	$100	Eight years	16
	" "	169,	$100		16
	" "	170,	$100		16
	" "	171,	$100		16
	" "	172,	$100		16
	" "	173,	$100		16
	" "	174,	$100		16
	" "	175,	$100		16
	" "	176,	$100		16
	" "	177,	$100		16
	" "	178,	$100		16
	" "	179,	$100	Nine years	18
	" "	180,	$100		18
	" "	181,	$100		18
	" "	182,	$100		18
	" "	183,	$100		18
	" "	184,	$100		18
	" "	185,	$100		18
	" "	186,	$100		18
	" "	187,	$100		18
	" "	188,	$100		18
	" "	189,	$100		18

	" " 190, $100	Ten years		20
	" " 191, $100			20
	" " 192, $100			20
	" " 193, $100			20
	" " 194, $100			20
	" " 195, $100			20
	" " 196, $100			20
	" " 197, $100			20
	" " 198, $100			20
	" " 199, $100			20
	" " 200, $100			20
404	Bond No. 201, $100	Eleven years		22
	" " 202, $100			22
	" " 203, $100			22
	" " 204, $100			22
	" " 205, $100			22
	" " 206, $100			22
	" " 207, $100			22
	" " 208, $100			22
	" " 209, $100			22

Registered October 12, 1869.

WILLIAM ROSS, JR., *Clerk.*

BERNARDS TOWNSHIP, *March* 21, 1870.

Bond No. 47, $1,000	Twenty years' coupons		40
" " 48, $1,000			
" " 49, $1,000			
" " 50, $1,000	Twenty-one years		42
" " 51, $1,000			
" " 52, $1,000			
" " 53, $1,000	Twenty-two years		44
" " 54, $1,000			
" " 55, $1,000			
" " 56, $1,000	Twenty-three years		46
" " 57, $1,000			
" " 58, $1,000			
" " 59, $1,000	Twenty-four years		48
" " 60, $1,000			
" " 61, $1,000			
" " 62, $1,000	Twenty-five years		50
" " 63, $1,000			
" " 64, $1,000			
" " 65, $1,000			

405	Bond No.	123,	$500	
	" "	124,	$500	
	" "	125,	$500	Twenty-one years..... 42
	" "	126,	$500	
	" "	127,	$500	
	" "	128,	$500	
	" "	129,	$500	
	" "	130,	$500	Twenty-two years..... 44
	" "	131,	$500	
	" "	132,	$500	
	" "	133,	$500	
	" "	134,	$500	
	" "	135,	$500	Twenty-three years..... 46
	" "	136,	$500	
	" "	137,	$500	
	" "	138,	$500	
	" "	139,	$500	
	" "	140,	$500	Twenty-four years..... 48
	" "	141,	$500	
	" "	142,	$500	
	" "	143,	$500	
	" "	144,	$500	Twenty-five years..... 50
	" "	145,	$500	
	" "	210,	$100	
	" "	211,	$100	
	" "	212,	$100	
	" "	213,	$100	
	" "	214,	$100	
	" "	215,	$100	
	" "	216,	$100	Twelve years..... 24
	" "	217,	$100	
	" "	218,	$100	
	" "	219,	$100	
	" "	220,	$100	
	" "	221,	$100	
	" "	222,	$100	
406	Bond No.	223,	$100	
	" "	224,	$100	
	" "	225,	$100	
	" "	226,	$100	
	" "	227,	$100	
	" "	228,	$100	Thirteen years..... 26
	" "	229,	$100	
	" "	230,	$100	
	" "	231,	$100	
	" "	232,	$100	
	" "	233,	$100	

	"	"	234,	$100	
	"	"	235,	$100	
	"	"	236,	$100	
	"	"	237,	$100	
	"	"	238,	$100	
	"	"	239,	$100	Fourteen years..... 28
	"	"	240,	$100	
	"	"	241,	$100	
	"	"	242,	$100	
	"	"	243,	$100	
	"	"	244,	$100	
	"	"	245,	$100	
	"	"	246,	$100	
	"	"	247,	$100	
	"	"	248,	$100	
	"	"	249,	$100	
	"	"	250,	$100	Fifteen years..... 30
	"	"	251,	$100	
	"	"	252,	$100	
	"	"	253,	$100	
	"	"	254,	$100	
	"	"	255,	$100	
	"	"	256,	$100	
	"	"	257,	$100	
	"	"	258,	$100	
	"	"	259,	$100	
	"	"	260,	$100	Sixteen years..... 32
	"	"	261,	$100	
	"	"	262,	$100	
	"	"	263,	$100	
	"	"	264,	$100	
	"	"	265,	$100	
407	Bond	No.	266,	$100	
	"	"	267,	$100	
	"	"	268,	$100	
	"	"	269,	$100	
	"	"	270,	$100	
	"	"	271,	$100	Seventeen years..... 34
	"	"	272,	$100	
	"	"	273,	$100	
	"	"	274,	$100	
	"	"	275,	$100	
	"	"	276,	$100	

	"	"	277,	$100	
	"	"	278,	$100	
	"	"	279,	$100	
	"	"	280,	$100	
	"	"	281,	$100	
	"	"	282,	$100	Eighteen years..... 36
	"	"	283,	$100	
	"	"	284,	$100	
	"	"	285,	$100	
	"	"	286,	$100	
	"	"	287,	$100	
	"	"	288,	$100	
	"	"	289,	$100	
	"	"	290,	$100	
	"	"	291,	$100	
	"	"	292,	$100	
	"	"	293,	$100	Nineteen years..... 38
	"	"	294,	$100	
	"	"	295,	$100	
	"	"	296,	$100	
	"	"	297,	$100	
	"	"	298,	$100	
	"	"	299,	$100	
	"	"	300,	$100	
	"	"	301,	$100	
	"	"	302,	$100	
	"	"	303,	$100	
	"	"	304,	$100	Twenty years..... 40
	"	"	305,	$100	
	"	"	306,	$100	
	"	"	307,	$100	
	"	"	308,	$100	
	"	"	309,	$100	
408	Bond No.		310,	$100	
	"	"	311,	$100	
	"	"	312,	$100	
	"	"	313,	$100	
	"	"	314,	$100	
	"	"	315,	$100	Twenty-one years..... 42
	"	"	316,	$100	
	"	"	317,	$100	
	"	"	318,	$100	
	"	"	319,	$100	
	"	"	320,	$100	

	"	"	321,	$100	
	"	"	322,	$100	
	"	"	323,	$100	
	"	"	324,	$100	
	"	"	325,	$100	
	"	"	326,	$100	Twenty-two years..... 44
	"	"	327,	$100	
	"	"	328,	$100	
	"	"	329,	$100	
	"	"	330,	$100	
	"	"	331,	$100	
	"	"	332,	$100	
	"	"	333,	$100	
	"	"	334,	$100	
	"	"	335,	$100	
	"	"	336,	$100	
	"	"	337,	$100	Twenty-three years..... 46
	"	"	338,	$100	
	"	"	339,	$100	
	"	"	340,	$100	
	"	"	341,	$100	
	"	"	342,	$100	
	"	"	343,	$100	
	"	"	344,	$100	
	"	"	345,	$100	
	"	"	346,	$100	
	"	"	347,	$100	
	"	"	348,	$100	Twenty-four years..... 48
	"	"	349,	$100	
	"	"	350,	$100	
	"	"	351,	$100	
	"	"	352,	$100	
	"	"	353,	$100	
409	Bond	No.	354,	$100	
	"	"	355,	$100	
	"	"	356,	$100	
	"	"	357,	$100	
	"	"	358,	$100	
	"	"	359,	$100	Twenty-five years..... 50
	"	"	360,	$100	
	"	"	361,	$100	
	"	"	362,	$100	
	"	"	363,	$100	
	"	"	364,	$100	
	"	"	365,	$100	

Registered March 21st, A. D. 1870.

WILLIAM ROSS, Jr., *Clerk.*

STATE OF NEW JERSEY,
Somerset County, ss:

I, Matthew H. Vanderveer, clerk of said county, do hereby certify that the foregoing is a true, full, and correct copy of the registry of bonds of the township of Bernards, in the county of Somerset, of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county, at the clerk's office in Somerville, this twenty-seventh day of March, A. D. 1879.

[L. S.] MATT. H. VANDERVEER, *Clerk.*

410 We, the undersigned, tax-payers of the township of Bernards, in the county of Somerset, in the State of New Jersey, do hereby consent that the commissioners appointed for said township to carry into effect the act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow, on the faith and credit of said township and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such township, ascertained by the assessment rolls thereof for the year 1867), which money is to be invested, in compliance with the provisions of said act, in the stock of the said railroad company, and that the said commissioners may exercise full and complete powers for said township to carry into effect the purposes and provisions of said act.

Dated July 20th, 1868.

John H. Anderson.	Eliza Ballentine.	Wm. Ballentine.
Charles S. Quimby.	James H. Winget.	John G. Ballentine.
Bradner Guerin.	Abram B. McCollum.	Leonard H. Bird.
Roderick A. Mitchell.	Edward Hight.	William S. Frost.
Robert Hanna.	William K. Collyer.	William Riel.
William Amerman.	Cornelia J. Collyer.	David Van Ness.
Daniel S. Doty.	Nicholas W. Riel.	Hugh Sheridan.
John S. Quimby.	Jacob Cole.	John Mullen.
W. A. McMurtry.	Christiana Petty.	John Maher.
Thomas Bird.	Jacob L. Smith.	Ann M. Blazure.
John O. Rush.	Calvin H. Dunham.	G. T. Bunn.
Thomas G. Bunn.	Robert McMurtry.	Dennis H. Layton.
Hugh R. Bunn.	James McMurtry.	James Blazure.
William Barker.	David S. Dunn.	Daniel D. Savadge.
Charles Barker.	411 John H. Whitenack.	Samuel S. Stout.
Con Smyht.		Josiah Ludlow.
Garret V. Freeman.	Peter Welsh.	Enoch M. Bedell.
James W. Bunn.	Henry Demun.	Henry Ludlow.
S. S. Voorhees.	William Demun.	John Scolly.
Edmund S. Janes.	John Voorhees.	James H. McCollum.
Moody Bloodgood.	Andrew McWilliams.	Walter K. Sturges.
Henry Baird.	John Sheats.	Morris P. Crater.
James H. Whitenack.	Patrick Gougerty.	John B. Dunster.
William Hamler.	William Lawrence.	John F. Hall.

Andrew S. Cole.
John McCollum.
Luther Axtell.
Mary Isaacs.
Michael Lunehan.
Francis Oliver.
John Y. Marsh.
Theodore Woodward.
Michael Havey.
John H. Harris.
Geoge Butz.
Thomas Lidy.
Michael Norris.
Hannah Bird.
Oliver Woodward.
Fer'd Van Doren.
William Reynolds.
A. McMurtry.
William Childs.
Peter D. Cross.
John T. Bair.
Ellen Blin.
Oliver Dunster.
Ogden Allen.
Jacob Wadnow.
Daniel Martin.
Job Compton.
Amos M. Douglass.
David G. Schomp.
Stephen N. T. Meeker.
Abraham Quimby.
Joseph Murphy.
John V. Bunn.
Conrad Weber.
Peter Z. Smith.
William Ballentine, jr.
Erastus Ballentine.

Witness: JOHN H. ANDERSON.

STATE OF NEW JERSEY,
Somerset County, ss:

412 On the nineteenth day of September, A. D. eighteen hundred and sixty-eight, before me, the subscriber, one of the justices of the peace in and for the county aforesaid personally appeared John H. Anderson, to me well known to be one of the commissioners for the township of Bernards, in said county, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union, to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who being by me duly sworn according to law, on his oath saith, that he resides in said township, and is one of the said commissioners; that he knows J. H. Anderson, Chas. S. Quimby, Bradner Guerin, Edmund S. James, Moody Bloodgood, Henry Baird, Roderick Mitchell, Robert Hannah, William Amerman, Daniel S. Doty, John S. Quimby, W. A. McMurtry, Thomas Bird, John O. Rush, Thomas G. Bunn, M. R. Bunn, William Barker, Charles Barker, Con Smyht, Garret V. Freeman, James W. Bunn, S. S. Voorhees, John A. Whitenack, Peter Whelch, Henry Demun, Wm. Demun, John Voorhees, Andrew McWilliams, John Shoats, Patarie Geanerty, William Lawrence, William Ballentine, John G. Ballentine, Leonard H. Bird, James H. Whitenack, William Hamler, Eliza Ballentine, James H. Winget, Abm. B. McCollum, Edward Hight, Wm. R. Colver, Cornelia J. Colver, M. W. Rial, Jacob Cole, Christiana Betty, Jacob Z. Smith, Catharine H. Dunham, Robert McMurtry, James McMurtry, David S. Dunn, Luther Axtell, Mary Isaacs, Michael Lennehan, Francis Oliver, John Y. Marsh, Thodore Woodward, Michael Havey, John H. Harris, George Butz, Thomas Lidy, Michael Norris, Hannah Bird, William S. Frost, William Riel, David Van Nest, Hugh Sheridan, John Maher, John Mullen, Ann M. Blazier, G. T. Bunn, Dennis H. Layton, James Blazier, Daniel D. Savage, Samuel S. Stout, Josiah Ludlow, Enoch M. Bodell, Henry Ludlow, John Scally, James H. McCollum, Walter K. Sturges, Morris Crater, John B. Dunster,
413 John L. Hall, Andrew S. Cole, John McCollum, Oliver Woodward, Ferd. Van Doren, William Reynolds, A. McMurtry, Peter D. Cross, William Childs, John L. Blair, Ellen Blair, Oliver Dunster,

Ogden Allen, Jacob Wannow, Daniel Martin, Job Compton, Amos M. Douglass, David G. Schomp, Stephen N. T. Meeker, Abraham Quimby, Joseph Murphy, John V. Bunn, Conrad Weber, Peter Z. Smith, William Ballentine, jr., Erastus, Ballentine, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof, and that he was present and saw the said person above named sign, seal, and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John H. Anderson, subscribed his name to the same at the same time as an attesting witness.

JOHN H. ANDERSON.

Proved, sworn, and subscribed before me.

JAMES H. THOMPSON,
Justice of the Peace.

We, the undersigned, taxpayers of the township of Bernards, in the county of Somerset, in the State of New Jersey, do hereby consent that the commissioners appointed for said township to carry into effect the act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow, on the faith and credit of said township, and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such township ascertained by the assessment rolls thereof for the year 1867), which money is to be invested, in compliance with the pro-
414 visions of said act, in the stock of the said railroad company; and that the said commissioners may exercise full and complete powers for said township to carry into effect the purposes and provisions of said act.

Dated July 17, 1868.

Thomas K. Heath.
George Gidney.
R. Irving.
Wm. Noel Corbet,
J. H. Osborne.
John C. Cross.
Rachel Ann Sanders.
David L. Lewis.
P. O. Belding.
Eli Howlett.
John Dayton.
Augustus Moore.
Administrator of estate of Jont. Moore, dec'd.
Daniel D. Craig.
James Allen.
Arminda Blair.
William B. Cooper.
Charles Grenlock.
Henry Winne.
Robert C. Bishop.
Israel Bedell.
his
Samuel + Elden.
mark.
Oscar Conkling.
John J. Allen.
James H. Thompson.
Patrick Moore.
Michael Donovan.
John Crampton.
David McDermott.
Charles Butler.
A. V. Stevens.
Robert C. Galtra.
E. A. Doty.
C. S. DeCoster.
Adm'r of P. S. Collyer est.
Nathaniel Compton.
Jacob Van Arsdale.
John Rickey.
Maranda Gillaspey.
Calvin Thompson.
C. S. DeCoster.
Samuel S. Adamson.
Carl Kampimer.
J. L. Van Liew.
W. H. Dikeman.
Augustus Moore.
William Allen.

Robert Blair.
Samuel C. Dayton.
John Guerin.
Cornelius Winne.
Freeman Pennington.
John Hippenmeyer.
John H. Lyon.
Joseph Alward.
J. V. Stewart.
A. T. Albro.
Peter A. Layton.
Henry H. Apgar.
Daniel H. Powelson.
Charles P. Crue.
Jonathan M. Fisher.
John C. Latourette.
Ira B. Prudden.
S. R. DeCoster.
D. F. Dunham.
415 A. F. Voorhies.
Maria Wilson.
John Adamson.
James S. Stevens.
Benjamin Towson.
Jo. Stantial.
Isaac L. Simpson.
his
Richard X Murphy.
mark.
Lawrence V. Davis.
Aaron Dilley.
Jerome. Heddebrant.
Josiah Layton.
Robert Bryan.
Henry Brien.
Tunis Dilley.
E. C. Dayton.
Isaac Conkling.
John R. Gillispie.
his
Charles — Crue.
mark.
W. B. McMurtry.
Jonathan P. Harris.
Ezra Dayton.
Thomas B. Ayers.
A. E. Webster.
P. L. Cooper.
Eliza W. Lewis.
Preston Mullener.
Caroline L. Overton.
Margaret Van Allen.
Rosa J. Doty.
Hannah Feeney.
John Henry.
Patrick Goherty.
his
Henry — Fulkison.
mark.
Michael Newman.
Thos. Baird.
John Hin.
P. P. Melick.
John Dow,
A. P. Layton.
F. Thompson.
Henry W. Angleman.
Crayton M. Space.
Bernard Geroghty.
John G. Wert.
S. C. Dayton.
Isaac Duvall.
David M. Arrowsmith.
John P. Hand.
John P. Weinmann.
F. J. Van Wagner.
W. A. Heath.
William Pope.
James J. Hill.

Witness: JOHN GUERIN.

STATE OF NEW JERSEY,
Somerset County, ss:

On the nineteenth day of September, A. D. eighteen hundred and sixty-eight, before me, the subscriber, one of the justices of the peace, in and for the said county and State, personally appeared John Guerin, to me well known to be one of the commissioners for the town-
416 ship of Bernards, in said county, to carry into effect the purpurses and provisions of the act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who, being by me duly sworn according to law, on his oath saith that he resides in said township, and is one of the said commissioners; that he knows Thomas K. Heath, George Gidney, Jacob Vanarsdale, Nathaniel Compton, Richard Irving, William A. Corbet, John Rickey, Maranda Gillespie, Jonathan H. Osborn, Calvin Thompson, John C. Cross, Cornelius S. DeCoster, Rachel Ann Sanders, Samuel S. Adamson, Carle Kampmier, P. O. Belding, J. L. Van Liew, W. H. Dikeman, John Dayton, Augustus Moore, Augustus Moore (for Jonathan Moore estate), Daniel D. Craig, William Allen, James Allen, Robert Blair, Arminda Blair, Samuel C. Dayton, William B. Cooper, John Guerin, Charles Grenlock, Cornelius Winne, Henry Winne, Freeman Pennington, Robert C.

Bishop, John Hippenmeyer, Israel Bedell, John H. Lyon, Samuel Elson, Joseph Alward, Oscar Conkling, Jacob V. Stewart, John J. Allen, A. T. Albrow, James H. Thompson, Peter A. Layton, Patrick Moorer, Henry H. Apgar, Michael Donovan, Daniel H. Powelson, John Crampton, Charles P. Crue, David McDermott, Jonathan M. Fisher, Charles Butler, John C. Latourette, Abraham V. Stevens, Ira B. Prudden, Robert C. Goltra, Samuel R. DeCoster, E. Alonso Doty, David H. Dunham, C. S. DeCoster (for Pierson S. Collyer estate), A. F. Voorhies, Caroline L. Overton, Mariah Wilson, Margaret Van Allen, John Adamson, Rosa J. Doty, James S. Stevens, Hannah Feeney, Benjamin Towsen, John Henry, Joseph D. Stanshel. Patrick Gherity, Isaac L. Simpson, Richard Murphy, Michael Newman, L. V. Davis, Theodore Baird, Aaron Dilley, John Hin, Jerome E. Hildebrant, B. P. Melick, Josiah Layton, John Dow, Robert Bryan, Anthony P. Layton, Henry Bryan, Frederick Thompson, Tunis Dilley, Henry W. Angleman, E. C. Dayton, Crater M. Space, Isaac Conk-
417 ling, Bernard Gherity, John R. Gillespie, John G. West, Charles Crue, S. C. Dayton, William B. McMurtry, Isaac Duvall, Jonathan O. Hand, David M. Arrowsmith, Ezra Dayton, John P. Hand, Thomas B. Ayers, John P. Weinmann, E. A. Webster, F. J. Van Wagner, P. L. Cooper, Wm. A. Heath, Eliza W. Lewis, Wm. Pope, Preston Mulliener, James I. Hill, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal, and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John Guerin, subscribed his name to the same at the same time as an attesting witness.

JOHN GUERIN.

Proved, sworn, and subscribed before me.

JAMES H. THOMPSON,
Justice of the Peace.

We, the undersigned, tax-payers of the township of Bernards, in the county of Somerset, in the State of New Jersey, do hereby consent that the commissioners appointed for said township to carry into effect the act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow, on the faith and credit of said township, and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuations of the real estate and landed property of such township, ascertained by the assessment rolls thereof for the year 1867), which money is to be invested, in compliance with the provisions of said act, in the stock of the said railroad company; and
418 that the said commissioners may exercise full and complete powers for said township to carry into effect the purposes and provisions of said act.

Dated July 25, 1868.

Oliver R. Stelle.	P. S. Benbrook.	John Wickenhofer.
Thomas Terrell.	Hellen Hunter.	John Lare, jr.
Charles A. Smylie.	Joseph Armin.	J. B. Skinner.
David Kline.	Lawrence McKenna.	Geo. Redford.
Robert B. Cooke.	Wm. V. D. Layton.	

Witness: OLIVER R. STELLE.

STATE OF NEW JERSEY,
Somerset County, ss:

On the nineteenth day of September, A. D. eighteen hundred and sixty-eight, before me, the subscriber, one of the justices of the peace in and for the county and State aforesaid, personally appeared Oliver R. Still, to me well known to be one of the commissioners for the township of Bernard, in said county, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to *to* authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who, being by me duly sworn according to law, on his oath saith that he resides in said township, and is one of the said commissioners; that he knows Oliver R. Stelle, Joseph Armin, Thomas Terrell, Lawrence M. Kenna, Charles A. Smylie, Wm. V. D. Layton, David Kline, John Wickenhoffer, Robert B. Cook, John Lané, jr., P. S. Benbrook, J. B. Skinner, Hellen Hunter, George Redford, the persons whose signatures are witnessed by him, signed to the foregoing consent, and knows them to be persons who signed and executed same after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal, and
419 deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said Oliver R. Still, subscribed his name to the same at the same time as an attesting witness.

OLIVER R. STELLE.

Proved, sworn, and subscribed before me.

JAMES H. THOMPSON,
Justice of the Peace.

STATE OF NEW JERSEY,
Somerset County, ss:

Be it remembered that on the nineteenth day of September, A. D. eighteen hundred and sixty-eight, before me, James H. Thompson, one of the justices of the peace in and for the county and State aforesaid, personally appeared William A. McMurtry, assessor of the township of Bernard, in said county, who, being by me duly sworn according to law, on his oath doth depose and say that he is the assessor of the township of Bernard, in said county, and is now in the possession of said office, and is discharging the duties thereof; that he has read the foregoing written consent of the tax-payers of the said township of Bernard, in said county, and that he has also read and inspected the names thereto attached, and also the proof of the signatures thereto by the commissioners thereto annexed, and that he has also carefully inspected the assessment-roll of said township for the

year eighteen hundred and sixty-seven, and knows the tax-payers of said township, and that the persons signing the said written consent are a majority of the tax-payers of such township, and represent a majority of the real property of such township, and also that the said persons signing the said written consent are a majority of the tax-payers of such township appearing upon the assessment-roll of such township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they do represent a majority of the landed property of such township ap-
420 pearing upon the said assessment-roll of such township for the year eighteen hundred and sixty-seven.

W. A. McMURTRY.

Proved, sworn, and subscribed before me.

JAMES H. THOMPSON,
Justice of the Peace.

STATE OF NEW JERSEY,
Somerset County, ss:

I, , clerk of said county, and clerk of the circuit court and inferior court of common pleas of the county of Somerset, do hereby certify that the foregoing is a true copy of the written consent and affidavits filed in the office of the clerk of said county (relating to the bonding of the township of Bernards) on the seventeenth day of December, A. D. eighteen hundred and sixty-eight.

In witness whereof I have hereunto set my hand and affixed the seal of said county this

[L. S.]

We, the undersigned tax-payers of the township of Bernards, in the county of Somerset, in the State of New Jersey, do hereby consent that the commissioners appointed for said township to carry into effect the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack
421 Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow on the faith and credit of said township and execute bonds for the sum of one hundred and twenty-seven thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such township, ascertained by the assessment-rolls thereof for the year 1867), which money is to be invested, in compliance with the provisions of said act, in the stock of the said railroad company, and that the said commissioners may exercise full and complete powers for the said township to carry into effect the purposes and provisions of said act.

July 9, 1869.

Jacob H. Cole.
Tunis Cole.
Parmenas Henry.
Louis Shafer.
Andrew N. Dunster.
Gabriel Gephart.
Patrick Tearney.
Halsey McMullen.
J. M. Frost.
Tappen Guerin.
John Wray, jun.
George Ballentine.
Abram McCollum.
David Swick.
Andrew J. Totten.
John Cummings.
Stephen Henry.
John L. Hays.
James Allen.
John Wray.
Wm. H. Jelliffe.
Cornelius Wolfe.
William Wolfe.
William Van Dorn.
Barney Domagin.
Eugene Van Dorn.
Charles Levan.
Mrs. Elizabeth Sanders.

Jas. F. Guerin.
James O. Baird.
Calvin D. Smith.
Robert Donagin.
Joachim G. Todd.
Henry Smith.
Oliver L. Bonnell.
George Butz, jr.
James H. McCollum.
George B. Marsh.
David Cumming.
Seely B. Pierson.
Oscar Smith.
John Petty.
Henry C. Blazure.
Erastus Ballentine.
Lewis T. Janes.
Francis A. Drake.
Andrew J. Card.
William Scott.
Fernando Rush.
James A. Whitenack.
Stephen McMullen.
Henry Hoffman.
Antone Rophert.
John McCloud.
John Wear.
Mrs. J. A. Sanders.

422 Patrick Morrison.
Ethelbert C. Blazure.
George W. Price.
James Bird.
John T. Martin.
John Bockoven.
J. S. B. Long.
George J. Anderson.
William Hambler.
Abram M. Wagoner.
Peter Demond.
Wm. H. Baird.
Richard T. Ball.
Charles P. Dunster.
John Rogers.
George S. Harmer.
Wm. T. Quimby.
Abraham Cole.
Stewart Wolfe.
Thomas B. Frost.
John G. Ballentine.
William D. Depoe.
Albert L. Axtell.
James Glanville.
Lewis H. Hannon.
C. W. Terry.
Jacob Bird.

BERNARDS, 28*th August*, 1869.

The above signatures were severally affixed by the parties aforesaid, whose names are hereto above signed in presence of—

JOHN H. ANDERSON, *Commissioner.*

STATE OF NEW JERSEY,
Somerset County, ss:

On the thirtieth day of August, A. D. eighteen hundred and sixty-nine, before me, the subscriber, one of the justices of the peace in and for the county of Somerset, personally appeared John H. Anderson, to me well known to be one of the commissioners for the township of Bernards, in said county, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who, being by me duly sworn according to law, on his oath saith that he resides in said township and is one of the said commissioners; that he knows Jacob H. Cole, Jas. F. Guerin, Tunis Cole, Parmenas Henry, James O. Baird, Calvin D. Smith, Lewis Shafer, Robert Donagin, Andrew N. Dunster, Joachim G. Todd, Gabriel

Gephert, Henry Smith, Patrick Tearney, Oliver L. Bonnell, Halsey McMullen, George Butz, J. M. Frost, James H. McCollum, Tappen
423 Guerin, George B. Mush, John Wray, jr., David Cummings, George Ballentine, Seely B. Pierson, Abraham McCollum, Oscar Smith, David Swick, John Petty, Andrew J. Totten, Henry C. Blazier, John Cummings, Erastus Ballentine, Stephen Henry, Lewis T. Janes, John L. Hays, Francis A. Drake, James Allen, Andrew Card, John Wray, William Scott, Wm. H. Jelliffe, Fernando Rush, Cornelius Wolfe, James A. Whitenack, William Wolfe, Stephen McMullen, William Van Doren, Henry Hoffman, Barney Donagan, Antone Rophert, Eugene Van Doren, John McCloud, Charles Levan, John Wear, Mrs. Elizabeth Sanders, Mrs. J. A. Sanders, Patrick Morrison, John Rogers, Ethelbert Blazier, George S. Harner, George W. Price, William T. Quimby, James Bird, Abraham Cole, John T. Martin, Jacob Baird, Stewart Wolfe, John Bockoven, Thomas B. Frost, J. S. B. Long, George and Charles P. Dunster, G. Ballentine, George J. Anderson, William D. Depoe, William Hambler, Albert L. Axtell, Abram M. Wagener, James Glanvill, Peter Demond, Lewis H. Manning, Wm. H. Baird, C. W. Terry, Richard T. Ball, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal, and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John H. Anderson, subscribed his name to the same at the same time as an attesting witness.

JOHN H. ANDERSON.

Proved, sworn, and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

We, the undersigned, tax-payers of the township of Bernards, in the county of Somerset, in the State of New Jersey, do hereby consent that the commissioners appointed for said township to carry into effect the act of the legislature of the State of New Jersey entitled
424 "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow on the faith and credit of said township and execute bonds for the sum of one hundred and twenty-seven thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such township, ascertained by the assessment-rolls thereof for the year 1867), which money is to be invested, in compliance with the provisions of said act, in the stock of the said railroad company; and that the said commissioners may exercise full and complete powers for said township to carry into effect the purposes and provisions of said act.

April 1st.

O. W. Brown.
Joseph B. Elsen.
his
Daniel + Oaks.
mark.
John H. Blazier.
William A. Dunn.
E. A. Pope.
John M. Sanders.
John T. Allen.
John H. Hollinshead.
Alexander Blazier.
John W. Craig.
Wm. S. Winget.
Peter Wolf.
A. A. Lewis.
J. K. Bishop.
Daniel T. Doty.
his
William + Willis.
mark.
J. K. Pruden.
John B. Blazier.
Joseph Thompson.
Charles H. Chapman.
James Doty.
G. C. Whyckoff.
John Willis.
H. A. Craig.
J. K. Lewis.
George Harmann.
C. C. Heath.
George Whyckoff.
James M. Bishop.
Orseneus Terry.
William H. Elsen.
his
Joseph + Blazier.
mark.
Samuel D. Doty.
his
John + White.
mark.
James Hand.
George Brown.
his
Alex. + Allen.
mark.
Daniel J. Willson.
L. A. Thompson.
W. M. DeCoster.
David B. Holt.
425 George Blazier.
his
Philip + Prall.
mark.
Stephen Sanders.
his
John + Whycof.
mark.
Amsy Wolfe.
John O. Heath.
John Golder.
Shubal Hudson.
John F. Millerick.
James V. Blazure.
David R. Moffett.
Robert Donagin.
James H. Pope.
Israel D. Willis.
John V. Hulick.
Theodore T. Cyphers.
his
Samuel + Stansberry.
mark.
Robert H. Lane.
Eben Peppard.
William Lethen.
Daniel Chapman.
Wm. Romer.
Charles Ditler.
Jacob Van Nest.
S. D. Gillispie.
Joseph Jackson.
John R. Weinman.
S. B. Gillispie.
John Tester.
David Alward.
John Hand.
his
Erastus + Drummond.
mark.
William M. Blazure.
Hugh Geroghty.
S. H. Butler.
Charles A. Moore.
Albert Hellwick.
his
Thomas + Crofferty.
mark.
Michael Shay.
Thomas Lowery.
George D. Lewis.
J. F. Robinson.
William H. Callaway.
Abraham Marker.
his
William + Dugen.
mark.

BERNARDS, *28th August*, 1869.

The above signatures were severally affixed by the parties aforesaid, whose names are hereto above signed in presence of—

JOHN GUERIN, *Commissioner*.

STATE OF NEW JERSEY,
Somerset County, *ss:*

On the thirtieth day of August, A. D. eighteen hundred and sixty-nine, before me, the subscriber, one of the justices of the peace in and for the county and State aforesaid, personally appeared John Guerin, to me well known to be one of the commissioners for the
426 township of Bernard, in said county, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to *to* authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9,

1868, who, being by me duly sworn according to law, on his oath saith that he resides in said township and is one of the said commissioners; that he knows O. W. Brown, G. C. Whyckoff, James Doty, Joseph B. Elson, Daniel (his X mark) Oaks, John H. Blazier, H. A. Craig, William A. Dunn, J. K. Lewis, E. A. Pope, Geo. Harman, John M. Saunders, C. C. Heath, John T. Allen, George Wykoff, John H. Hollingshead, Jeremiah Bishop, Alex'r Blazier, Orseneus Terry, John W. Craty, William H. Elgin, William S. Wright, Joseph (his X mark) Blazier, Peter Wolf, Samuel D. Doty, A. H. Lewis, John (his X mark) White, J. K. Bishop, James Hand, Daniel T. Doty, George Brown, William (his X mark) Willis, Alonx. (his X mark) Allen, J. K. Pruden, Daniel J. Wilson, John B. Blazier, L. A. Thompson, Joseph Thompson, Wm. M. De Coster, Charles H. Chapman, David B. Holdt, George Blazier, Jacob Van Nest, Philip (his X mark) Prall, S. D. Gillispie, Stephen Saunders, Joseph Jackson, John (his X mark) Whycof, John A. Weiman, Amsey Wolf, S. B. Gillespie, John O. Heath, John Tester, John Golder, David Alward, Shubal Hudson, John Hand, John F. Mellerick, Erastus (his X mark) Drummond, James V. Blazier, William M. Blazier, David R. Moffett, Hugh Geraghty, Robert Donagin, S. H. Butler, James H. Pope, Chas. A. Moore, Israel D. Willis, Albert Hellrich, John V. Hellrick, Thos. (his X mark) Cafferty, Theodore T. Cyphers, Michael Shay, Sam'l (his X mark) Stansberry, Thomas Lowrey, Robert H. Lane, George D. Lewis, Eben Peppard, J. F. Robinson, William Lethen, William H. Calloway, Daniel Chapman, Abram Masker, Wm. Romer, William (his X mark) Dugen, William Dittler, the persons whose signatures are witnessed by him, signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof; and that he was present and saw the said persons above named sign, seal, and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John Gerrin, subscribed his name to the same, at the same time, as an attesting witness.

427

JOHN GUERIN.

Proved, sworn, and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

We, the undersigned, tax-payers of the township of Bernards, in the county of Somerset, in the State of New Jersey, do hereby consent that the commissioners appointed for said township to carry into effect the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow on the faith and credit of said township and execute bonds for the sum of one hundred and twenty-seven thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such township, ascertained by the assessment-rolls thereof for the year 1867), which money is to be invested, in compliance with the provisions of said act, in the stock of the said railroad company; and that the said commissioners may exercise full and complete powers for said township to carry into effect the purposes and provisions of said act.

1869, April 2nd, Benjamin Runyon.
" " 3rd, Daniel Moore.
" " 3rd, Israel V. Berrell.
" " 5th, Edward Marfinz.
" " 5th, Israel R. Blazier.
" " 5th, Patrick Martin.
" " 7th, John C. Berk.

428 The above signatures were severally affixed by the parties aforesaid, whose names are hereto above signed in presence of—
OLIVER R. STELLE, *Com'r.*

STATE OF NEW JERSEY,
Somerset County, ss:

On the thirtieth day of August, A. D. eighteen hundred and sixty-nine, before me, the subscriber, one of the justices of the peace in and for the county and State aforesaid, personally appeared Oliver R. Steele, to me well known to be one of the commissioners for the township of Bernard, in said county, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who, being by me duly sworn according to law, on his oath saith that he resides in said township and is one of the said commissioners; that he knows Israel V. Barrell, Daniel Moore, Israel R. Blazier, John C. Burke, Benjamin Runyon, Edward Marving, and Patrick Martin, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same, after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal, and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said Oliver R. Steele, subscribed his name to the same, at the same time, as an attesting witness.

OLIVER R. STEELE.

Proved, sworn, and subscribed before me.

JAMES H. THOMPSON,
Justice of the Peace.

STATE OF NEW JERSEY,
Somerset County, ss:

Be it remembered that on this thirtieth day of August, A. D. eighteen hundred and sixty-nine, before me, James H. Thompson, one of the justices of the peace in and for the county and State aforesaid, personally appeared William A. McMurtry, assessor of the township of
429 Bernard, in said county, who, being by me duly sworn according to law, on his oath doth depose and say that he is the assessor of the township of Bernard, in said county, and is now in the possession of said office and is discharging the duties thereof; that he has read the foregoing written consent of the tax-payers of the said township of Bernard, in said county, and also similar consents filed on the 23d day of December, 1868, and that he has also read and inspected the names thereto attached, and also the proof of the signatures thereto by the commissioners thereto an-

nexed, and that he has also carefully inspected the assessment-roll of said township for the year eighteen hundred and sixty-seven, and knows the tax-payers of said township, and that the persons signing the foregoing written consent, together with those who signed the said consents filed 23d December, 1868, are a majority of the tax-payers of such township and represent a majority of the real property of such township, and also that the said persons signing the said several written consents are a majority of the tax-payers of such township appearing upon the assessment-roll of such township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they do represent a majority of the landed property of such township appearing upon the said assessment-roll of such township for the year eighteen hundred and sixty-seven.

W. A. McMURTRY.

Proved, sworn, and subscribed before me.

JAMES H. THOMPSON,
Justice of the Peace.

STATE OF NEW JERSEY,
Somerset County, ss:

I, , clerk of said county and clerk of the circuit court and inferior court of common pleas of the county of Somerset, do hereby certify that the foregoing is a true copy of the written consent and affidavits relating to the bonding of Bernards Township, filed in the office of the clerk of said county on the first day of September, A. D. 1869.

[L. S.] In witness whereof I have hereunto set my hand and affixed the seal of said county, this . .

430 *Proxy.*

Know all men by these presents that we, Oliver R. Stelle and John Guerin, two of the commissioners of the Township of Bernards, of the county of Somerset, of the State of New Jersey, appointed under the act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company, approved April 9th, 1868, do hereby constitute and appoint Benjamin F. Beekman our attorney and agent for us, and in our name, places, and stead to vote as our proxies at any election of directors of the New Jersey West Line Railroad Company upon the stock standing in the name of the said township of Bernards, according to the number of votes we should be entitled to vote if then personally present, hereby revoking all proxies heretofore given by us.

In witness whereof I have hereunto set my hand and seal this
431 third day of June, one thousand eight hundred and seventy-two.

JOHN GUERIN, [L. S.]
OLIVER R. STELLE, [L. S.]
Commissioners of Bernards Township.

Sealed and delivered in the presence of—
WM. FERGUSON.

(Indorsed:) U. S. circuit court, district of New Jersey, between Cyrus Curtis, compl't, and the Inhabitants of the Township of Bernards & others,

def'ts. Exhibit 2 on the part of the defendants, the executors of Beekman deed. Feb'y 24, 1879. J. Whitehead, U. S. C.

432 We, Oliver R. Stelle and John Guerin, two of the commissioners appointed for the Township of Bernards, in the county of Somerset, State of New Jersey, under an act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company, approved April 9th, 1868, for and in consideration of one dollar to us paid by Benjamin F. Beekman, of the city of New York, do promise and agree to assign, transfer, and set over unto said B. F. Beekman, his executors, administrators, or assigns, all and any part of the capital stock of the Passaic Valley and Peapack Railroad Company which within six months from this date may be paid for to us, or any two of said commissioners, in bonds of the Inhabitants of the Township of Bernards, in the county of Somerset, issued or purporting to

433 have been issued under and pursuant to the act above mentioned at par; that is for every one hundred dollars of principal of sold bonds legally transferred to said commissioners we will transfer to said Beekman, his executors, administrators, or assigns, two shares of the capital stock of said railroad company standing in the name of the said township. The number of the shares of stock of said railroad company standing in the name of said township is twenty-five hundred and forty, of the par value of fifty dollars each, amounting in all at par to one hundred and twenty-seven thousand dollars.

In consideration of the agreement aforesaid, and for the further consideration that said two commissioners have given to said Beekman a proxy to vote upon said stock at the next annual election of said company, said Beekman doth agree with said commissioners within twenty days

434 from date hereof, if the election hereinafter mentioned shall result as hereinafter mentioned, to deliver to said commissioners, upon the terms aforesaid, so many of said bonds as at par will amount to seven thousand dollars at least, in exchange for *all* equal amount at par of said stock.

And if at the annual election of said company such board of directors as said Beekman shall nominate, or cause to be nominated, or shall vote for, shall be elected, or a majority of his nominees, or of the persons he shall vote for as directors of said company (now called the New Jersey West Line Railroad Company) shall be elected, then and in that event said Beekman doth covenant, promise, and agree with the three commissioners of said township, and with every one of them, and with the said township to indemnify and save harmless, and keep harmless and fully indemnified, as well the said township as the said commissioners, and each and every

435 of them, from the payment of any of the principal or interest of the said township bonds, and of every of them, and from all costs, charges, expenses, counsel fees, and other charges which may be incurred on or by means of any suit or suits, proceedings or proceeding commenced, or hereafter to be commenced, against said township for the recovery of any of the principal of or of the interest on said bonds, or on any of them, or against the said commissioners, or any of them, for anything they have done or omitted to do in respect to said stock, or said bonds, or in respect to this agreement.

And it is further agreed by the said commissioners that while said Beekman shall keep and perform this agreement on his part, the proxy so as aforesaid given to him shall not be revoked and shall be irrevocable.

Dated New York, June 3rd, 1872.

OLIVER R. STELLE.
JOHN GUERIN.

Witness:
W. Z. LARNED.

436 (Indorsed:) U. S. circuit court, district of N. J. Between Cyrus Curtis, compl't, and The Inhabitants of the Township of Bernards & others, def'ts. Exhibit 1, on the behalf of defendants, executors of Beekman, dec'd. Feb'y 24, 1879. J. Whitehead, U. S. com.

437 United States circuit court, district of New Jersey.

BETWEEN CYRUS CURTIS, COMPL'T,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et al., def't. } On bill, &c.

By NIXON, *District Judge:*

As the same question were in contriversy is the above cause as were involved in the suit against the same defendant corporation by Thomas H. Morrison et al., the same decree in favor of the complainant is ordered here as ordered in that case.

By the court:

S. D. OLIPHANT, *Clerk.*

Filed Sept. 23, 1879.

438 United States circuit court for the district of New Jersey.

CYRUS CURTISS
v.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the County of Somerset. } In debt.

It being suggested to the court that Cyrus Curtiss, the above-named plaintiff, hath departed this life testate, and that letters testamentary upon his estate have been duly issued to George N. Stebbins, of the State of New York, it is therefore ordered that this cause do stand revised and do proceed in the name of said George N. Stebbins, executor, who is hereby authorized to prosecute the same to final judgment.

Dated Oct. 2, 1879.

JNO. T. NIXON, *J.*

Filed Oct 2, 1879.

439 *Final decree.*

United States circuit court for the district of New Jersey. In equity.

CYRUS CURTISS
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the County of Somerset; Oliver R. Stelle, John Guerin, com'rs, &c.; Catharine A. Beekman, J. Reeve Vanderveer, and Wm. Z. Larned, executors, &c.

This cause coming on to be heard before the honorable William McKennan and the honorable John T. Nixon, judges of the circuit court of the United States for the district of New Jersey, at the term of March, in the year of our Lord one thousand eight hundred and seventy-nine, at the court-room of said court in the city of Trenton, in said State, upon the pleadings and proofs therein, and having been debated by Henry C.
440 Pitney, esquire, of counsel with the complainant, and by Jacob Vanatta, esquire, of counsel with the defendants, and the court having considered the same, and *having* now of the opinion that the complainant is entitled to the relief prayed for in his bill:

It is therefore, on this second day of October, eighteen hundred and seventy-nine, by the said William McKennan and the said John T. Nixon, judges as aforesaid, ordered, adjudged, declared, and decreed, and the said judges by virtue of the power and authority of this court do order, adjudge, declare, and decree that the several and respective bonds or writings in the nature of bonds mentioned and described in the complainant's bill of complaint, and each of them, shall be as against the said defendants, and each of them, at all times and in all places and for all purposes held, deemed, and taken to *the* valid and effectual in the law in all respects the same and to the same extent as if the same and each of them had been before the issuing of the same actually and in fact sealed by the said John H. Anderson, Oliver R. Stelle, and John Guerin, commis-
441 sioners as aforesaid of said township of Bernards; and the said The Inhabitants of the Township of Bernards, in the county of Somerset, are hereby perpetually enjoined and forever restrained from setting up, alleging, or pretending in said action at law so brought, as in said bill of complai*n*t set forth, in this court upon divers overdue interest coupons upon said bond, or in any action at any time hereafter to be brought in any court upon said bonds, or either or any of them, or upon any interest coupons at any time due thereon by any lawful holder or owner thereof, or of either of them, that the said bonds, or any of them, were not actually sealed by said commissioners before being issued by them.

And this decree shall take effect as of the fourth day of April, eighteen hundred and seventy-nine.

And it is further ordered, adjud'ed, and decreed that the said defendants, the Inhabitants of the Township of Bernards, in the county of , do pay to the complainant his costs of this suit to be taxed, in
442 which shall be included the costs of printing the pleading and evidence herein.

JNO. T. NIXON, *J.*

Filed Oct. 2ond, 1879.

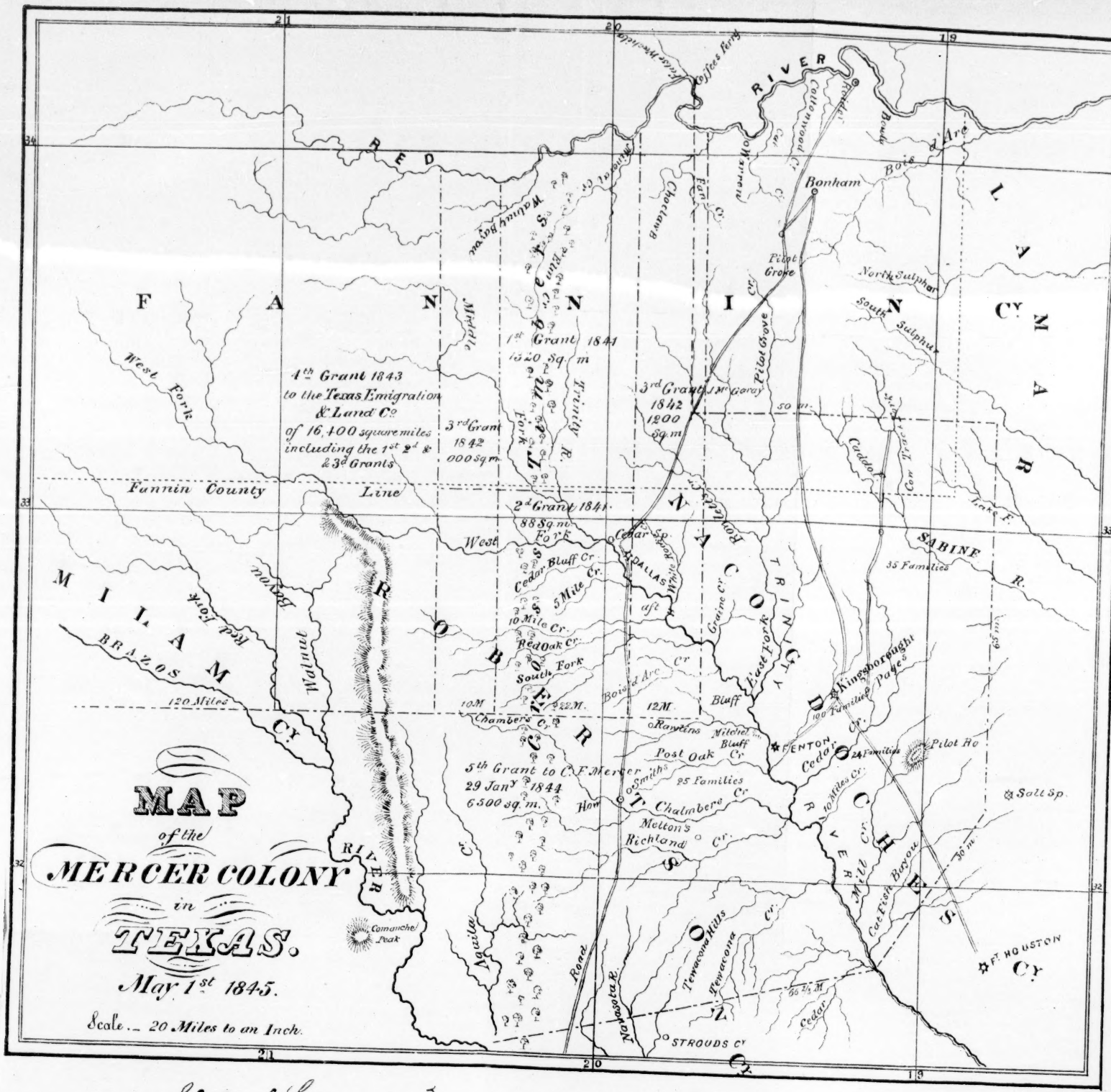
443 United States circuit court, district of New Jersey.

I, S. D. Oliphant, clerk of the United States circuit court, third circuit, district of New Jersey, do hereby certify the foregoing written and printed pages to be a true transcript of the record and proceedings in said suit, as fully as the same remain on file and of record in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office at Trenton, in said district, this ninth day of October, in the year of our Lord eighteen hundred and eighty.

[SEAL.] S. D. OLIPHANT, *Clerk.*

(Indorsement on cover:) No. 96. The Inhabitants of the Township of Bernards, in the County of Somerset and State of New Jersey, appellants, vs. George N. Stebbens, executor of Cyrus Curtis, deceased. New Jersey, C. C. U. S. Filed October 11, 1880.



State of Texas
Department of State

I, A. W. De Berry, Secretary of State for the State of Texas do hereby certify that this is a true and correct photographed copy of the "Map of the Mercer Colony in Texas" as filed in this department - Map of date May 1st, 1845.

In testimony whereof I have hereunto signed my name and caused the seal of the Department of State to be affixed at the City of Austin this the 19th day of February, A. D. 1874.

(L. S.)

A. W. De Berry
Secretary of State.

Nos. 863 & 864 -
Walsh, Commr &c
v.
Preston
&
Preston
v.
Walsh, Commr &c.

page 190 1/2

No. 9

B

SKETCH
OF THE
PUBLIC SURVEYS
IN
IOWA

Scale 12 miles to an inch.

D.M'Clelland Sc. Wash.

REFERENCE

c Surveyed platted plats copies descriptive lists made and field notes recorded and transcribed.
t Surveyed platted plats copied and descriptive lists made.
f " " " " " field notes recorded and transcribed.
s " " " " "
s Under process of survey.
o Townships only the exterior lines of which are run.
Blank townships are those the exterior lines of which are being run.

Surveyor Generals Office,
Dubuque October 24th 1851.
George B. Sargent
Surv. Gen.l